

E N Q U I R I E S
C O N C E R N I N G
L E T T R E S D E C A C H E T,
T H E C O N S E Q U E N C E S O F
A R B I T R A R Y I M P R I S O N M E N T,

A N D A
History of the Inconveniencies, Distresses, and
Sufferings of STATE PRISONERS.

Written in the Dungeon of the CASTLE OF VINCENNES,

B Y T H E
C O U N T D E M I R A B E A U.

WITH A PREFACE BY THE TRANSLATOR.

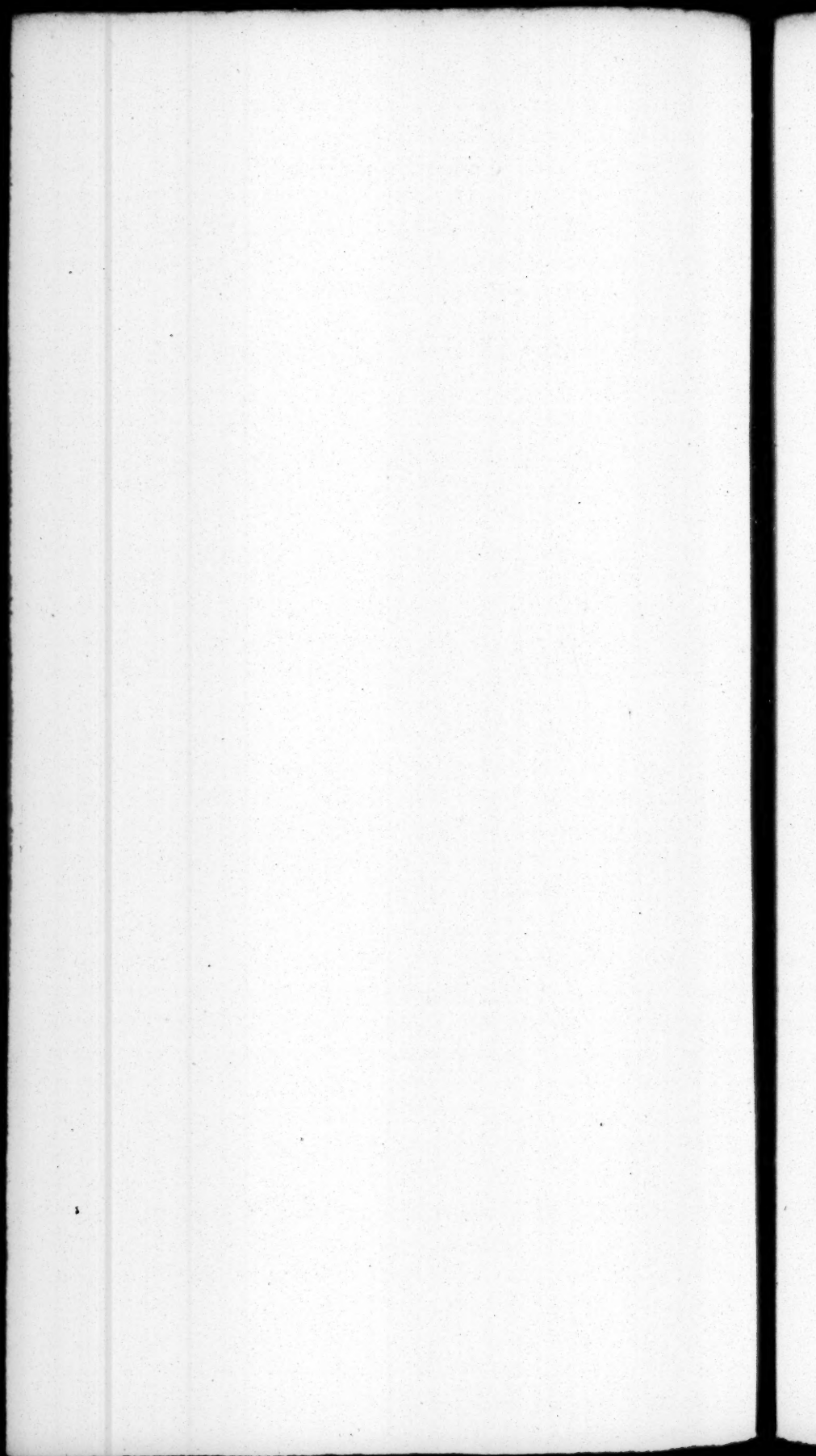
Non ante revellar
Exanimem quam te complectar, Roma, tuumque
Nomen, libertas ! & inanem prosequar umbram. (LUCAN.)

Dii quibus imperium est animarum, umbræque silentes,
Et chaos, & Phlegeton, loca nocte silentia late ;
Sit mihi fas audita loqui ! sit numine vestro
Pandere res alta terra & caligineertas. (VIRG.)

V O L. II.

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INTRODUCTION.

M. Le Noir (the late Lieutenant of Police, a man of the greatest sagacity, moderation, and merit—Translator) is my benefactor. It is my duty to apprize the reader of the second part of this work, that I owe much to him. But I know that private motives of gratitude do not alone authorize the eulogium of a public man : it is sufficient, however, that, on the most unequivocal proofs, I am able to boast of the natural goodness and equity of this sensible Magistrate, who to do good, rises above prejudices, and even clamour. Let not the iniquity then that I am about to expose, be imputed to him. If *M. Le Noir* does not look near enough into the administration of these houses of sorrow and oppression, of which he is by his office the inspector, it is a fault : but it is the fault of circumstances, rather than his own : he has too much employment. An occupation which of itself would employ one man, is only a point in the mass of his duties and his functions ; he is under a necessity therefore of following the routine of office. Besides, the Commissioner for the department of State Prisons is very far from being able decidedly to change the received methods : he can only make a report, propose, and demand. I believe

INTRODUCTION.

M. le Noir is incapable of concealing the truth when it comes within his sight ; and it is for this reason I dedicate this part of my work to him, which, I hope, will sufficiently prove how far adulation is remote from my character, and my principles. As for the rest, this Magistrate, however fair his prospects from his virtues and his talents, will probably be unable to do any thing more for me at the moment when this book shall be published : my homage, therefore, is founded solely on my respect for his person.

ON
LETTRES DE CACHET
AND
STATE PRISONS.

SECOND PART,

CHAP. I.

Preliminary observations. Pecuniary advantages of the Commandant of the dungeon of Vincennes. Income and food of the prisoners.

IN the year 1712, complaints were made to Madame de Maintenon of the interior administration of the prisons. The memorial was referred to Mr. D'Argenson, then Lieutenant of Police, and the following was his answer on the subject:

“ The immediate police of the ordinary prisons
“ belongs to the Parliament, and I can do nothing
“ in it. It is true that the gaolers make the prisoners pay as dear as they can for every article
“ with which they furnish them, and that they,
“ who are not in a condition to purchase them,
“ are very miserable. I think it would be worthy
“ of the King's justice, to exempt these gaolers
“ from an annual duty of two thousand and odd
“ livres, which has only been paid by them for a
“ few

“ few years past, and which serves them as a pre-
 “ text for treating their prisoners with more par-
 “ simony and austerly.

“ As for those who are confined in the Bastile,
 “ at Vincennes, at Charenton, or St. Lazore, by
 “ order of his Majesty, I can, and must assure
 “ you, that they have nothing to wish for in point
 “ of food or cloathing: I shall add, that the Com-
 “ mandants of the Bastile and Vincennes bestow
 “ on them much charitable attention, far indeed
 “ beyond what might be proposed or prescribed to
 “ them. I know even, by the frequent visits I
 “ make there, that every spiritual and bodily aid
 “ is given them on the slightest malady; but the
 “ privation of liberty renders them insensible to
 “ every other good, and seems to authorize those
 “ unjust complaints, those injurious reproaches,
 “ with which they usually fill their placets and
 “ their memorials, whenever they have an oppor-
 “ tunity of delivering them. If that, you have
 “ been pleased to refer to me, contained more
 “ specific facts, I should have been enabled to make
 “ a better use of it (a).”

I do not know whether this report be true or false (b), nor is it of much consequence to us what passed in that respect in 1712; but I shall make some remarks on this fragment, which may easily be applied to the following facts.

In the first place, if the gaolers of ordinary prisons make their prisoners pay very dearly for every article they furnish them, these articles at least are to be had for money. We shall see very soon whether it be the same in state prisons.

Secondly,

(a) See the collection of the letters of Madame de Maintenon.

(b) I must say, that the assertion of Mr. D'Argenson, respecting the spiritual and temporal assistance in sickness, is very accurate.

Secondly, if from an inconceivable excess of cupidity, reserved for modern times, in which the Exchequer system has classed every natural and moral object in its code, and set a price on every thing, a retribution is required, even from a gaoler, which must ultimately fall upon the prisoners, we have at least the right to expect that these *favoured shutters-up of men*, who are allowed large sums for the emoluments of their places, should be content with that, and shew themselves more scrupulous in the employment of the many destined for their subsistence, with which they are entrusted, as their lawful gains being considerable, their clandestine robberies must be more odious.

Thirdly, I do not understand what can be those *charities* of the *Commandants*, who are nobly paid for decently subsisting their prisoners; nor why *these charitable attentions cannot be enjoined them*. They are, it seems to me, their first duty as *men*, as the safety of their charge is their first duty as gaolers.

Fourthly, in short, M. D'Argenson was guilty of a palpable contradiction, in attributing the complaints inserted in the *Memorials* or *Placets* delivered after their detention to the ill-humour it inspires. When state prisoners are able to communicate their placets to any other than the Lieutenant of Police, they are free: they are no longer parties, therefore, against the Commandant of whom they complain. Alas! from whom can knowledge be acquired of what passes in these silent dens, where no person penetrates, except from those who have had the misfortune to inhabit them?

After these preliminary observations I come to the point. M. D'Argenson alleges with reason, that a memorial containing no specific facts, could be of no great utility; for a man vaguely attacked,
defends

defends himself in the same manner; and how, in that case, unravel the truth? Well, then! they are *specific facts*, which I am going to articulate.

It is difficult to conceive how much state prisons cost the King. Amongst the debts of Louis XIV. we find, in the expence of them by Mr. de Forbonnois, an article of one hundred and thirty-six thousand livres for the bread of the prisoners shut up by the interest of the Jesuit Le Tellier in the Bastile, at Vincennes, at Pier-en-cise, at Samur, and at Loche, under pretext of Jansenism. The numbers of Lettres de Cachet encreased very much in the course of the following reign, of which œconomy was not the virtue. As for the present administration, I am ignorant, from the depth of my dungeon, what are its principles and proceedings; but my existence, and that of my neighbours, testify to me, that the mode of these arbitrary proscriptions still subsists. I shall not enter into calculations, necessarily defective, of the expences occasioned in general by State Prisons. All pecuniary details, unapplicable to the Prisoners and the Commandant of the Dungeon of Vincennes, are foreign to my plan (c): the following are what relates to them:

As secrecy is one of the main objects they have in view in these houses, it has been thought necessary strongly to interest those who have the care of them, by rendering their places very lucrative. They are entrusted with the nourishment of the prisoners,

(c) There is a physician, a chirurgion major, a dentist, an oculist, a confessor, a chaplain, and all sorts of workmen attached to the Dungeon of Vincennes, besides the three turnkeys, and the servants kept by the King for prisoners of a certain class. He supplies cloaths, and other necessaries of that kind, liberally, it is said, to those whose expences he pays. It may be conceived to what an expence all these particulars together amount.

prisoners, doubtless because they have had the address to persuade the administration that it was a necessary thing; and availing themselves of these two words, SECRESY, SECURITY, (words so energetic, as to impose silence on reason and humanity) they have declared, that they could not answer for their prisoners but on that condition, who besides should not be harrassed by a greedy sutler.

The King allows the Commandant of Vincennes six livres a day for the food, washing, and lighting of each prisoner. Firing is paid for separately, and at the rate of three cords of wood for each chamber. It must be understood, that State Prisoners, at their own expence, pay at least as much. They are at liberty to spend more; but no composition can be made. The King, besides this, bestows on the Commandant three vacant places, for supposed prisoners. All this is independent of the salary and emoluments attached to his place. The salary of the Commandant of Vincennes is three thousand livres; he enjoys four gardens, one of which contains fifty-two arpents (an arpent is 100 perches square, of 18 feet each); he has several times been bid for it six thousand livres a year. A handsome and vast range of apartments is also annexed to this post. I am not sure whether something be not also allowed him for contingencies; but on recapitulating his salary and emoluments, one may with certainty, and keeping below the mark, value the fixed revenue of the Commandant at eighteen thousand livres (d). [A friend

(d) Salary, and one of the gardens,	-	-	9000	livres.
An extra allowance for three more prisoners than are in the dungeon,	-	-	6570	
Total,			15,570	livres. Three

friend of the *Translator* assured him, that Mr. Rougement himself valued his place, in speaking of it to him, at near *forty thousand*.]

On this calculation alone, surely, the person who presides over the Dungeon of Vincennes is a gaoler richly paid. It seems as though he might, without any excess of romantic delicacy, content himself with such a profit, and religiously apply to its proper destination the money he receives for the support of the prisoners. It is undoubtedly the intention of government to render his place lucrative, by granting him such large appointments; but certainly not that he should profit at the expence of the prisoners, since it pays the vacant places. I do not know whether there be any regulation respecting the nutriture; and on that supposition it ought to be in the hands of every prisoner; but what I do know is, that from the beginning to the end of the year, there is served to them a piece of bouilli, and a course at dinner; which consists of pastry every Thursday; a piece of roast meat, and a course at supper; a pound of bread, and a bottle of wine a day, and two apples at each of the repasts of Thursday and Sunday. The apples may be changed for a penny biscuit.

Let us suppose for a moment that this food is as well prepared as it ought to be, it will still be easy to value it. They do not give in the Dungeon of Vincennes, six times in the year, any thing but butchers meat. It is too high an estimate to put each daily portion at three pounds of meat; I am sure I am one pound above the mark. We shall soon see, that there is no other fire for the prisoners

Three other gardens, a vast suite of apartments at the gates of Paris, in so beautiful a situation as that of Vincennes, and which gives those who possess it the same exceptions as the royal houses, are not too highly valued at 2400 livres.

ers kitchen than that of the Commandant: the dressing the victuals, therefore, cannot be dear. Let us value it at about half the price of the meat, and I shall sometimes be too generous. The feeding of the prisoners, at this rate, does not amount to more than forty-five sols a day (e).

The washing and lighting of a prisoner cannot exceed six livres a month (f). I reckon, however, that disbursement. The allowance for each prisoner is one hundred and eighty livres a month, and the real expence seventy-three; there is not one therefore by whom the Commandant does not gain one hundred and seven livres a month, without reckoning a pretty considerable profit on the fuel, which will be calculated below. There may always be reckoned twelve prisoners in the Dungeon of Vincennes; but if I took the average number

(e) Butchers meat, the current price of which at Paris is nine sols (or 4d. halfpenny sterl.) is only worth eight at Vincennes, and seven without veal. From a privilege founded from time immemorial on the continual consumption of the Dungeon, the Commandant pays six liards (or three farthings) less than the public. Let us reckon the three livres a day for each prisoner,

	1	liv.	1	sol.	
A bottle of wine	0		10		} (dearly estimated, considering the quality.)
Bread	0		4		
Dressing victuals	0		10		
Total	2		5		

Two desserts a week, at two sols, make annually for each prisoner ten livres, eight sols, or for the whole Dungeon 124 livres, 16 sols.

(f) Each prisoner has four napkins and two dish-clouts a week, and one pair of sheets a month; six candles a week in summer, and eight in winter; at eight in the pound, worth twelve sols, it follows, that a prisoner consumes every year, for twenty-eight livres seven sols of candles. Upwards of forty-three sols remain for washing, from my calculation of three livres a day. They who are detained at their own expence, pay their washing separately from their food. Besides, my calculation goes upon the quantity of linen given out every month for many years.

number for the last twenty years, I should be considerably below the mark ; it is not very long since there were from twenty to thirty. But calculating only twelve, that makes twelve hundred and eighty-four livres a month, or fifteen thousand four hundred and eight livres evident annual gain ; which added to the sum of eighteen thousand livres already proved, form altogether thirty-three thousand four hundred livres revenue, for the Commandant of Vincennes, on a very moderate calculation (g).

I have supposed that the nature of the aliment was tolerable, in which case the cheer, though very middling, would be at least wholesome and tolerable, and the robbery, though manifest, less odious. But should it happen that the Commandant, equally ostentatious and covetous, having no more method than understanding, wished to keep the table of a Farmer-General ; that paying nobody (h), he was under the necessity of taking such things as were offered him, not only his domestics would strive to indemnify themselves for what they were in advance,

(g) The Commandant of Vincennes reckons amongst the number of his expences, the keeping the furniture in repair (we shall see what this furniture is, and how they are kept in order ; he bought them all of Mr. Guionnet, his predecessor, for thirty-six livres a room) and the chapel. It costs him two bottles of wine a month ; the flambeaux may cost him six livres a year.

(h) Mr. De Rougemont has owed at one time 8000 livres to a turnkey, and still owes 4000 to another. It is he who receives their salary, which is 600 livres. As for those who are retired, and pensioned, he has converted their pensions and arrears into a private debt, by giving them his note. This incorrectness, or rather this infidelity reaches all. Does a prisoner use forty or fifty livres worth of shoes in a year ? All their money, whether at their own expence or otherwise, is in the hands of Mr. De Rougemont, who paying no respect whatever to this deposit, and being always without money, makes the prisoners wait, as we shall see, for the most urgent necessities whole months, and then gives them only what is of the worst quality.

vance, giving only the least, and the worst of every thing they could, very sure that their master, too happy that they lent him their credit, and waited for their money, would not dare to reprimand them : but the butcher, who would set little value on so unexact a paymaster, and brings his bill in, on the first word of reproach, would furnish still-born and scorbutic meat. Now this is nothing less than a *supposition* ; it is the real state of the situation of Mr. DE ROUGEMONT, Commandant of the Dungeon of Vincennes (i).

All the victuals furnished in that prison are horribly disgusting, and, from that circumstance alone, unwholesome. Besides an eternal monotony, necessitated by the pecuniary derangement of the Commandant, as the butcher is the only one who supplies on credit, the dressing is extremely bad, as much from the quality of the meat, as from the negligence of the cook. Tough veal, sodden mutton, beef dressed a second time, or half raw, if it has furnished broth but once : this is the constant sustenance of the prisoners, excepting on Thursdays, when they have pastry, which, thanks to the laziness of the servants, is never enough baked. These victuals dried up, and ill chosen, are always drowned in a quantity of vegetables, and unmixed sauce, and without any seasoning. The vegetables supply the want of more solid nutriment, and cost nothing, because they come from his garden. The sight of these sauces alone makes the stomach rise. Observe that of this butcher's meat, which makes for *twelve months* in the year (k) the food of the prisoners, every good piece is reserved

(i) Since the year 1767.

(k) I do not speak of the *meagre* days. Every body knows that dressing is then more essential than for flesh meat. He gives nothing

reserved for the table of the Commandant : after which, his people choose what pleases them. The understrappers are next served, and at length the Dungeon (l).

If a turnkey (m) make any representation on the subject, the cook, sure of support, answers coldly, *Complain to the Commandant*. If he urge his complaints with warmth, the lacquies, the women cry out, *Is it not too good truly for the prisoners ?* So high an idea have they formed in this house of the rights of the Dungeon ! And that head cook, whose accounts are settled but not paid, out of patience and faucy from waiting, has the insolence to add, *If the prisoners were fed with straw, believe me, I would give them litter*. It is on these principles they are served. In general, they find horrid nastiness in their dishes. They dine at eleven in the morning, and sup at five. This ridiculous (n) and pernicious order, which leaves an interval of eighteen hours between two meals, and five only between two others, is the reason why the meat is seldom enough done at dinner (for would the cook rise in the morning for *prisoners* ?) and is always hardened in the evening, because the meat is always roasted

thing on those days, however, but vegetables, herrings and skate. These are three dishes which, they say, would be tolerable, if the cook thought proper.

(l) Three-fourths of the week it consists of pieces of neck-beef made into bouilli for the prisoners ; and the principal dish on one day in every week, is beef's liver fried with onions, and on another day, tripe.

(m) This name of turnkey has no need of explanation. They shut up and serve the prisoners. They that have a servant, who lives on what is left, pay 900 livres pension for him. They had formerly a bottle of wine for this. Mr. Rougemont has diminished one half, under the pretext that their master could not drink his bottle.

(n) This order is founded on the hour for shutting the gates in winter (five o'clock). Frivolous pretext ! for during three months of

roasted with the Commandant's dinner to save fire. Whether to keep it warm, or to conceal the dryness it has contracted on the spit, from its bad quality, it is left to stew until the hour of supper, upon charcoal, in a little broth, which renders it completely sodden.

Do not let it be imagined that I draw my examples from occasional negligences : it is the continual and daily method ; a method so well reduced to system, that if by chance the quality of the meat is such as to render one dish eatable, great care is taken to fill the second with hideous scraps, which would be too much for the most voracious appetite. If the turnkey says a word, they coldly answer him, *the other dish is excellent* ; and that is a sufficient reason. Why have they not painted meats of delft, or wax ? It would be but the first expence, and at least they would not be horrible to the sight.

The wine is not drinkable. The Commandant, who takes every thing, and always, when he can, on credit, or in small quantities, for want of money, is either obliged to take what they give him, or to change every week. It is well known how this change of liquors is prejudicial to the health.

I ask, if the King gives six livres a day for the daily subsistence of each prisoner, (and it must be admitted to be a reasonable allowance) for them to have nothing but the refuse of the gaoler's scullery ? Will it be answered, that it is not the intention to place him in a pleasurable abode in clapping him into the Dungeon of Vincennes ? What then ! would not its sad inhabitants be wretched enough,

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even

of the year it is night at four, and for six months it is day-light till eight or nine ; besides, when there are workmen, which often happens, they do not shut up till eight. But it is not worth while to let down the draw-bridges for the sake of the prisoners' health. To spare the Commandant's fire is the true motive.

even were their victuals tolerably dressed ? But once more, what is this allowance destined for, if not for the sustenance of each prisoner ? And why should they, who are maintained at their own expence, contribute to the amusements of the Commandant * ? Why cannot they be well fed for their money ? Why should it cost them a crown for such a meal as would make their servants quit them if they were obliged to put up with it.

In considering these victuals, which make one dread the wants of nature, I figure to my mind a man in years, accustomed to a delicate and good cheer, less seasoned than myself by all sorts of events, by changes of fortune and by travels, whose heart is destitute of lively affections, and his mind unstored, who consequently gives more into physical gratifications, into a sense wholly material, the only one, alas ! whose activity can be exercised by him in the cruel situation he is groaning under ; and who feels more forcibly those privations he has never known ; what sort of a life, I say to myself, does he lead here ? The hours of repast, the only hours perhaps in which he promises himself some pleasure, become a part of his punishment. His barbarous gaoler contrives, in spite of nature, to mix a moral torment with an impression purely physical. If the pleasure of sensible beings be the instrument of their preservation, disgust, joined to so many other miseries, must slowly undermine the health,

* The pavillion in his garden, the alley of Vincennes, and every alley in Paris, can witness his infamous amusements. But the retribution of Heaven has fallen on this monster. The Dungeon of Vincennes is destroyed, as a prison, Mr. De R. turned adrift, and from the possession of a large fortune, and such emoluments as we read of, is reduced almost to beggary. The eloquent, and noble-minded author, was not acquainted with half the horrors of this man's history.

health, and it is here the greatest misfortune to be sick without perishing. Half raw victuals, or frequently heated up, so hard as to be incapable of digestion, or nearly rotten, and juiceless, form a nutriment as unwholesome as disagreeable (o). What sentiment of honour and of pity can we suppose in a man, who, without measure and without moderation, can determine to gain upon the food of an unhappy being whom he keeps in irons? This man, however, has no other check than his own conscience: nobody looks after him: no complaints can be made but to him, or through him. He is party, judge, and witness: Why should he not also be the executioner?

Before I proceed to this important observation, I shall recount some other robberies, which are without a name; and one of which, very essential in its consequences, will furnish some idea of the principles of the administrator who can be guilty of them.

(o) Mr. Hecquet, who, in his *Treatise on Digestion*, attributes the greatest part of disorders to the want of digestion, says, that it is a sort of elixation, and that it is therefore relieving the stomach to give it food well prepared.

C H A P. II.

More pecuniary details. By what manœuvres prisoners are deprived of the means of complaint. Visits of the Lieutenant of Police. Necessary formalities in writing, even when the Minister has granted that permission.

I HAVE said that the King allows three cords of wood for each prisoner. The Commandant claims one of them, or the price at least, under pretext of supplying the guardhouse, which is furnished by the King, besides a surplus granted by the Governor. (The Governor and Commandant of Vincennes are two very different personages. *Translator.*) This wood is valued at two Louis the cord, instead of thirty-six livres, which it really costs. M. de Rougemont receives therefore for the two cords for each chimney six Louis, and they cost him only three. This is another object by which he gains eight hundred and seventy-four livres a year, at twelve prisoners, besides what I have already calculated. You imagine then that this wood so dearly bought is at least at the disposal of those who pay for it, or of those who are paid for: by no means. The turnkeys have orders to make only two fires a day; that is, to put wood in their stoves or chimnies only on visiting them in the morning, and again at dinner, or supper. The surplus arising from this infamous robbery, at the end of the winter is for the profit of the Command-

Commandant; for the turnkeys here have only what cannot be taken from them, the remainder of the food; which the prisoners would sooner throw down the necessary than send it back, for fear of having it again served up. When the turnkeys who have no family offer to sell it in the village of Vincennes, the peasants will not buy it. *It is the meat of the dungeon, say they, what would you have us to do with it?* So well is the reputation of Mr. de Rougemont established. But of two years saving of wood he always contrives to get one year's consumption for himself, including what is allowed and paid him, for what he does not furnish.

Is a prisoner sick? It is evident that the turnkey has much more trouble in serving him. It would be but natural to leave him the food allotted the prisoner, as the sick man pays the same as if he consumed it. The following was the regulation before the time of M. de Rougemont. The turnkey had three pounds of meat to make broth for the prisoner in his apartment, and before his eyes. His broth was good, and the keeper had what was left. This simple and decent order is changed. The Commandant assured the wretched inhabitants of the dungeon, that their broth would be better made in his house. It turned out as it was foreseen. M. de Rougemont sends up his dish-washings, and keeps the meat in his kitchen. This is but a petty larceny: what follows is horrible!

If a prisoner behaves ill, or has displeased the Commandant, he is put into the dungeon; a punishment frequently inflicted in this place, where all is dungeon, but where at least one sees the light of day in the ordinary apartments. The prisoner is there put on bread and water. It is evident,

dent, that if the turnkeys had not usually the remains of what the prisoners do not eat, a Commandant who possessed any sentiment of honour, to remove every idea of injustice and of interest, and to prove that in punishing, he had no other object in view than the necessity of punishing, would deliver on such occasions to his subalterns what is no longer his, since he is paid for it. Such was the practice before M. de Rougemont's time, but he has put an end to this *waste*, for so he calls it. The prisoner remains whole months in the dungeon, eating bread bedewed with his tears, justly reflecting that if his pension were less, his stay would not be long in that frightful abode, which may be called the den of hunger (a). Reflections are useless: they could add nothing to this fact which cannot be aggravated, and tends to characterize the most sordid and most unrelenting tyranny.

This is the man to whom is entrusted an absolute empire over citizens destitute of every means of defence, and whom there is a very great interest in calumniating. This is the most terrible consequence of the constitution of this house. It is necessary to expose it.

Under the pretext of a profound secret, which is requisite in the administration of State Prisoners. M. De Rougemont has removed all those who could unveil his robberies, or oppose them. No person in the world, but the confessor, can have access to the prisoners without witnesses. The serjeant of the guard must carefully remark the instant the surgeon major enters, and when he

(a) See the frightful story of Comte Ugolin, in Dante (Chart. xxxiii.)

*Breve portugio dentro della muda,
La qual per me ha'l titol della fame.*

he departs. He can enter no apartment without a turnkey who has the right, and an order not to suffer him to speak of any thing but the state of his health. One would imagine that food, which has an immediate connection with that health he is appointed to look after, ought not to be excluded from these restricted conversations. But does any one open his mouth to speak of it, the chirurgien major rises and goes away. But why this conduct, which, were it not for the circumstances, would be a prevarication? Because, as often as he had made complaints on the subject to the Commandant, he has answered him, *These are not your affairs*. Has he represented that wholesome or unwholesome sustenance is the cause of good or bad health; *Nonsense, nonsense, Sir; one can live on bread and water*. Yes, inhuman gaoler! one can live on bread and water, if the water be pure, and the bread good; but food, at which the sight as well as the taste revolts, which can neither be chewed nor digested, attack life in its very source, almost as much as your other barbarities; and the prisoners of Vincennes are not your kennel of dogs. After frequent and very brisk altercations, the surgeon has been finally forbid ever to speak to a prisoner of any thing but his pulse; for a man *cannot* be ill without he has a fever; and this gentleman, who has a large family, did not venture to risk his tranquillity in so unequal a contest, nor wage an eternal war with his superior.

An ancient officer of cavalry, at present a captain of invalids, performed for a long time the duties of major at the Dungeon of Vincennes, where his company was stationed. He lived in the greatest harmony with the predecessor of M. Rougemont: but he had an original sin in the eyes of the latter, which was his attachment to the Marquis

quis de Voyer, Governor of the Castle, in whose regiment he had served. From that moment, the present Commandant, who pretends to be Master of the Castle, as well as of the Dungeon, which the Governor by no means understands, intrigued to get rid of M. De la Boissiere, an honest man, wholly destitute of influence, but at least incapable of becoming an accomplice. M. De Rougemont had the insolence, or rather the folly, to make a turnkey refuse him admission into the Dungeon of Vincennes, on whom he laid the blame when the major complained of it. The latter had the goodness, or rather the weakness, not to put the turnkey in prison, by immediately demanding satisfaction from the Minister. It was then the reign of *La Sabathin*, from whom M. De Rougemont had dearly purchased his place. M. De la Boissiere was first straightened, after harrassed, continually disgusted, then put under arrest, calumniated, torn to pieces, and at length expelled, under various pretexts. The new captain of invalids does the duty of major, for which he has 600 livres annually from the King. These functions are reduced at present to assisting at mas; and M. Valage never sees a prisoner.

As for the turnkeys, whom the Commandant may dismiss at pleasure, may accuse of malversation, punish at will, and even ruin, judge whether poor underlings, dependant as they are, dare to raise their voices, supposing they were not all sold to him. Do they convey the complaints of a prisoner? They are well off if the storm does not fall on them; if they are not accused of robbery or connivance. If the complaint be of the QUANTITY, they are supposed to have an interest in it. In vain do they repeat the word QUALITY: it is a subterfuge. They are told, not *quality*, but *quantity*, is
written

written in their eyes. Do they present a dish as a proof of their assertion (a formality which has been expressly forbid them), *What, Sir, answers the Commandant, they complain of this! Why if the Minister himself were to come here, I could not entertain him better* (b). What reply can they make? A choleric and forbidden countenance, a passionate and violent tone of voice, which last for whole months after, teach them to be more discreet in future; besides that they feel, that they risk themselves to no purpose, by their representations. When the principal gaoler (for such a man deserves no other title) has thus removed every witness he is not sure of, or frightened those whom he cannot get rid of, what is there he may not permit himself? This pitiless man covers all his manœuvres under the veil of vigilance, and ingratiates himself with his superiors by his indefatigable attention in preventing any thing from penetrating this darkness. In that indeed he is the most, if not the only person interested. A morose and greedy being! Ostentatious and mean! A ferocious tyrant over the wretches who are under his dependance! A fawning slave with the lowest satellite of the police, if he thinks he is in some favour! He talks of his *conscience*, which forbids him to suffer us to enjoy consolations which have no connection with the safety of the prison, which permits him to plunder us in such a manner as a Jew durst not attempt; to give us aliments detestable to the palate, destructive to the health. Have we not every reason to think that a man capable of such baseness will strive, as far as lies in his power, to prolong the captivity of the prisoners, since he must regard the
discharge

(b) These are his identical expressions, which I shall religiously preserve every time I make him speak; for his elocution is inimitable.

discharge of one of them as a diminution of his income?

I shall give no anecdote which may involve those from whom I have them, or which I cannot support with proofs. I shall only say in general that they make more than one prisoner pass for turbulent or mad (c), who is in full possession of his reason, but who, wanting the opportunity of writing, cannot reveal this horrible imposition. I shall besides observe, that it is not necessary to prove by any specific fact, that a patronized oppressor, who derives so much advantage from his place, sees with bitter regret every thing which can diminish his profits. The thing speaks for itself. Gain must be the sole object of accepting such an employment. A service of honour is not sought for, for its value: every lucrative and interested motive would fully honour. But an humiliating office, if riches did not hide every thing from our eyes, where one can scarcely do any thing but evil, or where one has at least the afflicting and arduous spectacle of continual misfortune, such an office can only have one temptation—GOLD. The Romans rewarded him, who saved the life of a citizen, with a crown of oak-leaves (d): there must be another sort of reward for him who keeps one in irons. It is difficult to conceive, that a
man

(c) Nothing more easy: a word, a gesture is interpreted. Application is made to put up a wicket, for the safety of the turnkeys, at the prisoner's door, which is not refused, and from that moment, no one enters into the chamber of the unhappy man thus stigmatized, above once a day, and three in company: every other message passes through the wicket.

(d) *O mores æternos! qui tanta opera honore solo donaverint, & cum reliquis coronas auro commendarent, salutem civis in pretio esse noluerint, clara professione servare quidem hominem nefas esse lucricausa.*

PLINY.

man who regards before every thing, the profits of which his employment is susceptible, becoming at once judge and party, must commit all sorts of iniquities? That each prisoner being worth to him at least sixty Louis d'ors clear gain, he is interested in keeping them as long as he can? That having no means of bringing people into his prison, he should strive to make those remain there, whom he has already in his possession; which is but too easy for him by false reports (e)? This man, in short, our *only* witness, has forty thousand livres a year for being a *false witness*. Who would not impeach the testimony of the man who received one hundred and fifty pistoles annually to depose against him? Well! this is pretty nearly the situation of each of us: it is not precisely for speaking ill of us that that our gaoler receives his money; but should he speak well of us, he runs the risk of losing it. Is it very probable that he will be faithful and impartial?

I know, however, that even this is not without example. The predecessor of the present Commandant possessed the general esteem, and his memory is still in veneration at Vincennes. M. GUIONNET, generous and compassionate, obliging and zealous, frank and active, was ever eager to alleviate the misfortunes of the prisoners entrusted to his care. He visited them frequently; he consoled them; he promised to serve them, and more than kept his promise. He supplied them with abundant nourishment, and manifested a studious attention for those who deserved it. He has been known to send to hot-houses to gratify the fancy of a convalescent.

(e) A pleasant answer was made me on this subject: *Why suspect him of it, when you are not capable of it yourself?* My reply is simple: *I am very incapable of stealing, yet I shut my doors.*

valescent (f). This worthy man, who did honour to his place, and raised himself far above it by his proceedings, has received his recompense. He was adored by those who depended on him, and esteemed by all those who knew him: every body was anxious to do him justice. He has acquired by fair methods, by a wise œconomy, an ample and untainted fortune. He has been able to make large advances to the King, and the prisoners never suffered from the credit he was obliged to give. It is worthy of remark too, that the pay at that time was one fourth less than it is at present (g), and that M. Guionnet did not enjoy the garden, for which six thousand livres a year have been offered. I render this homage to truth alone; for I have never known either this gallant man, nor any of his family; but I must add, that it would be wrong to hope for a frequent imitation of his example. Alas! why reckon on a virtue so rare as disinterestedness? Why make the success of an administration depend on that, when such an imprudent confidence is unnecessary? Why expose men to temptations too strong for their fragility?

But, it will be said, are not complaints to be made to the Lieutenant of Police?—Alas! how make them?—At the time of his visits?—You must learn what these visits are.

The

(f) M. Le Marquis De Châtelet, Governor of Vincennes, may be likewise mentioned, who undertook the direction of the Dungeon, because he resided at the Castle. A man of his sort could not enter into such a detail without its proving ruinous to him, and his affairs became embarrassed by it.

(g) Mr. Guionnet had only four livres ten sols a head for each prisoner; and I think, without being sure of it, that he had two vacant places less than M. De Rougemont. He advanced 60,000 livres for the King. M. De Rougemont has diminished all the allowances M. Guionnet had established.

The Lieutenant of the Police comes generally once a year to Vincennes to make his inspection. He finds at M. De Rougemont's a sumptuous and splendid repast, where every thing rare and delicate is provided. This Magistrate, it may be supposed, cannot believe that the same fare is provided for the prisoners; but special care is taken to insinuate that the cook he has been praising is that of the Dungeon (h): from whence he concludes that what is served there, is at least well dressed. It is under this impression that he mounts into the towers. He scarcely remains there an hour, and then only sees a certain number of prisoners, each of whom has but a few minutes audience. The affair of his liberty is that which alone occupies him. The rapidity of the visit stupifies him: he is in a hurry; ideas flow upon him, clash together, and are lost: the least important he lays aside. Man in a continual solitude loses the facility of elocution, and the presence of mind necessary to recapitulate in a few words, circumstances frequently very complicated. Should he determine to touch on that delicate point of food, will he desire the Commandant to retire? That is to make an enemy of him; and what an enemy! It is telling him also what is to be the subject of conversation in his absence. It is impossible that there should not be amongst the prisoners some one or other who prefers flattering him to the saying dangerous truths: he will appeal to him; one single testimony in his favour will counterbalance ten complaints; for complainants are suspected of capriciousness. Does a prisoner expect to be asked questions respecting his treatment? But to interrogate prisoners in the presence

(h) *I am ashamed*, says M. De Rougemont very modestly, *to own that I got my cook from M. De Marmontel.* Aye, indeed, it is precisely for that reason the prisoners are so ill served.

presence of the person interested, on whom they are dependent, is to demand their commendations. Prudent or moderate people evade the answer, or give it in an equivocal manner. If they are not called upon, they hold their tongue ; the testimony of the others is of no weight. The Magistrate, whose mind is taken up by so many different occupations, who only comes for form's sake, who is pressed, and wearied out, gives some vague recommendations, and seizes the slightest pretext to persuade himself that every thing is in order, because that persuasion relieves him from the trouble of repairing the disorder. But this is not the method of proceeding, when one is in earnest in searching after truth. The unfortunate persons must have no fear of being punished for the evils which are done them, if they be expected to complain of them : but no ; men in place are too often like the great, and princes, *lying children who say unto those who have eyes, see not ; to those who see, look not for us what is upright and just : tell us the things we wish to hear : let your eye behold errors for us.* Psalms.

But if the visits of the Lieutenant of the Police are too rare, and too rapid to enable him to discover what passes at Vincennes, is there not still the resource of letters remaining, which are read at leisure, the unanimous tenour of which could not fail of striking that Magistrate ?

This is the more deserving of examination, as it discovers one of the most intolerable abuses in these abodes of sorrow. In the first place, all the prisoners have not the use of paper, and this favour, it is said, is granted only to the smallest number. With respect to those who have that permission, the following is the method of proceeding when they wish to write, either to the Lieutenant of Police, or to the Minister.

The

The prisoner asks for some letter paper. The turnkey communicates his request to the Commandant, when he can meet with him, before which fortunate moment a week perhaps elapses. The Commandant answers, *that he will give him some*; for paper is a formidable weapon, which must be handled only by him to take off its edge. The Commandant forgets, or he does not forget his word, but there is no end to delays, whether they be affected to make a parade of his authority (a rage which manifests itself at every step he takes) or whether from real repugnance (which in truth is very well founded) to furnish his prisoner with the means of complaint. The turnkey however finds him again, renews his application for the prisoner, and reminds him of his promise: at length he receives the desired sheet, with an order to let him know *when the letter shall be written*. When the intelligence of this reaches M. De Rougemont, who has been long sought after, *he promises* some paper to make the cover. Fresh delays are contrived as tedious as the former. In vain does the unfortunate man who attaches to his letter perhaps the hope of his preservation, who has been striving to move his persecutor, his judge, his parent, or the minister, or the person in short to whom he has written; in vain he laments. The turnkey is only a passive being; he must obey—Are the paper and the wax at length delivered? *you will take*, says the Commandant, *no letter from such a number* (i,) *before I shall tell you*; and the pitiless persecutor still retards it for whole days.—Do not let it be imagined that there is here any embellishment: it is the simple drawing accurately delineated; and this conduct nearly cost a turnkey his life, whom a
prisoner

(i) The prisoners in the Dungeon are never named, but by the number of their chamber.

prisoner in despair at his repeated refusals, and imputing them to him, tried to murder with a billet of wood. This letter purchased by so many manœuvres on one side, by so much anxiety and so many sighs on the other; this letter enclosed in a cover to the Commandant, is delivered open into his hands. He may with-hold it therefore if he pleases; and if he dare not go that length for fear of consequences, he knows at least, if he is attacked, in what manner, and how to parry the attack. Is it to be imagined that a prisoner chooses voluntarily to put into his hands, complaints which he will certainly treat as calumnies, and which he can contradict by contrary testimonies?

Does any one desire the permission of sealing up a letter?

L'Enfer s'émue au bruit de Neptune en furie :
 Pluton sort de son trône : il pâlît, il s'écrie ;
 Il a peur que ce dieu dans cet affreux séjour,
 D'un coup de son trident ne fasse entrer le jour ;
 Et par le centre ouvert de la terre ébranlée,
 Ne fasse voir du Styx la rive désolée ;
 Ne découvre aux vivans cet empire odieux,
 Abhorré des mortels & craint même des Dieux (k).

Let us speak without figure. M. De Rougemont arrives out of breath, and in a rage.—What! Sir, you want to seal a letter?—Yes, Sir.—It IS NOT THE RULE (a standing answer to every complaint, to every demand; a religious veil which covers the most cruel manœuvres). It is not the rule, and it shall not be.—But I am writing to the Lieutenant of Police.—No matter: learn that nothing sealed goes out of these walls.—*I learn* there something very extraordinary.—Not at all; I have a hun-

(k) Boileau.

hundred letters from the Minister ordering me to read every thing.—You will not be offended, Sir, if I enquire of him whether there are not some exceptions to this order.—Very well ; I will ask it of him, for you.—Be it so, Sir ; but as it is a personal favour, I shall solocit it immediately from him.—A singular answer, Sir ; a very singular answer ! What, a sealed letter ? It is a thing unheard of : all sorts of calumnies then may be propagated ?—Oh, Sir, but that must be proved.—Well Sir ! what are you afraid of ? Whenever the matter is brought to the proof, the complaint, if there be any, may be communicated to you (l).—It is difficult to give a reasonable answer to such arguments ; but this man takes fire at every word you utter : *He starts : he trembles : he throws menacing looks at you, like to those haggard and fierce tyrants, one sees on old tapestry* (m). He then thinks himself excused from good sense and decency. A flux of words drowns his dearth of reasons ; and vehemence springing out of vehemence, a torrent of reproaches and menaces follows.—There shall be a complaint of this. I will give an account of it. This haughty language goes for nothing. Others have held the same. I WILL NOT BETRAY MY DUTY (a favourite expression of M. De Rougemont, VOL. II. Z which

(l) This is the exact relation of what passed between M. de Rougemont and the author. It is very evident that this prisoner, whoever he be, does not wish to keep his name a secret from the man, whose turpitude he thinks himself under a necessity of exposing. You will remark too, that I am perhaps of all the prisoners the one who is the best treated, for many reasons which it is unnecessary to alledge, and which depend less on myself than on the goodness of M. Le Noir, in whose commendation I have begun this volume.

(m) *But Appius reddens at each word you speak,
And stares, tremendous with a threat'ning eye,
Like some fierce tyrant in old tapestry.*

which he repeats on every occasion, aping the manner of a Roman hero).—I am the King's man (yes, the King's gaoler ; the hangman is also the King's hangman ; but he does ill from duty ; M. De R. from pleasure). I MUST BE THE THIRD MAN BETWEEN THE PRISONER, AND NO MATTER WHO (a whimsical and very insolent pretension !).—Does the prisoner relax, the letter does not go. Does he persist, war is declared between the gaoler and him ; and the former is *probably* the strongest. —Who can know all the calumnies with which he will massacre his untractable captive ? Has he the opportunity of defending himself ? Alas, who is not afraid of rendering his situation worse ? Of setting persons in power against him ; of rendering his captivity eternal by an indiscreet obstinacy ?—You may puzzle yourself in vain, you may discuss and debate ; you will never avoid the inconvenience of uniting in the same person all the powers, and of placing *duty* and *interest* in opposition, as long as one man shall be at once gaoler, proveditor, and reporter of the State Prisons. But we are not yet at the conclusion. Let us continue the exposition of facts.

C H A P. III.

Interior administration of the Dungeon of Vincennes.

Arrival : apartments : books : walks : visits from the Commandant : precautions when the prisoners quit the Dungeon.

LET it not be imagined that the gloomy persecutions of this prison are confined to those I have already described. I shall now complete the picture. From the preceding facts one may form some idea of the heart of M. De Rougemont. To conceive what follows, it is necessary to be acquainted with the stamp of his character and his understanding.

This man has all the bloated pride of the most complete ignorance : he is a balloon filled with wind. Penetrated with the sentiment of his own importance, he wishes to infuse it into every body else, and make himself be looked upon as a man essential and necessary to the state. He says so : he believes it himself ; so presumptuous is folly, or so far does the habit of lying incorporate the lie with the liar. As vanity never wore a more disgusting dress, he meets with frequent insults from all those who are not subordinate to him ; and his pretensions, always rejected (a), constantly regenerate

Z 2

from

(a) There is not an individual at the Castle of Vincennes who has not had some differences with this man, whom I paint from the life, and who disputed even with the Governor the jurisdiction

from the heart of humiliations. How does he indemnify himself for them? By making every thing dependent on him bend under the weight of his whims and caprices. Incapable of every thing, and reduced to the necessity of deriving consequence from trifles, his stupid brain, incessantly agitated by self-love, is continually studying the means of extending his empire, of multiplying precautions, of doing, and undoing; in a word, of being somebody. He goes dragging about with him his enormous corpulence: sarcasms shower upon him: no matter; *he keeps humming his drowsy pace; to rally him, is to whip a top, the more you whip him, the sounder he sleeps* (b).

But in the Dungeon he is an absolute despot, who is in his glory when he can open the cells, rivet the chains, and make his iron sceptre fall heavy on his wretched prisoners. Beware how you take his perfidious wheedling for kindness: you would be the more apt to give into his snare from his heavy elocution, which is calculated to inspire security: he has the malice as well as the countenance of an ape, without its understanding. Go right onwards to your object: do not follow him in his awkward gambols: the slightest appearance
of

tion of his government. M. de Rougemont cannot be made to comprehend that he is the gaoler of the Dungeon of Vincennes, and no more; and that those whom the King is pleased to lodge there, are neither State Prisoners, nor made to be under the rod of a gaoler. M. de Voyer has strongly checked, but with too little perseverance, the mad persecutions of this man, who has imprisoned servants, multiplied the guard-houses, straightened all the inhabitants of the Castle, forced and old and respectable General Officer, *Lord Dunkeld*, to sleep out of it by refusing to open the gates for him, because he had not a writing from him, &c.

(b) This excellent trait, truly original, and perfectly adapted to the personage to whom it is applied, is taken from Pope; I do not exactly recollect the verses.

of contradiction puts him in a fury : he foams. Be moderate : let him entangle himself. Be firm : he will soon become supple and cringing. You will obtain nothing, 'tis true, but vain promises ; but he will fear you. If you give way, he will oppress you : if you give him a handle, he will smother you.

From the first moment of his reign, he roundly foretold that every thing would change at the Dungeon of Vincennes (c), and every thing has changed. By means of intrigues he has removed every thing which can thwart, or watch over him. Those magic words, SECRECY, SECURITY, alone, have served him to overset every thing in this house. He seems to think all would be lost, and the state in danger, if the name of a prisoner was made known. The Gazettes announce the detention of those who may properly be called *State Prisoners*, excepting those persons who sometimes, in contempt of the right of nature and of nations, are arrested, and carefully hid from the knowledge of the powers interested. Such a crime is hardly committed in fifty years. As to family prisoners, tell us honestly, where is the importance of a secret so very profound, as that they must be refused every thing, and almost suffocated in their cells, for fear their existence should be known ? If it depended on their

(c) His expressions were, *I will not leave one stone upon another in the Dungeon* ; which must be understood in the figurative sense ; for M. de Rougemont would be very sorry to demolish that august house. [There is every reason to believe, that the present work, however disliked by authority, has proved the overthrow of Mr. de Rougemont, and the demolition of this place, as a State Prison, an event which took place in the year 1785, a short time before M. le Noir quitted the police. The prisoners then confined in it were transferred to the Bastille, and all Paris flocked to visit this scene of celebrity and horror. It was generally remarked, that on the sight of it every countenance was overcast. Translator.]

their gaolers, their stoves would serve them for prisons. To see these real or pretended anxieties, one would imagine that it is an extremely complicated affair to take care of them: the publick shall judge.

Every body knows the structure of the Dungeon of Vincennes, begun by Philip de Valois (d), and finished by Charles V. and so solidly constructed as to bear at this day not the smallest marks of age. It would require battering cannon, and of the largest bore, to make a breach in it. It is surrounded by ditches about forty feet deep, twenty paces wide, lined with stone masonry. This lining is a peak; and towards the top there is a cornice, or rather a shelving, which projects inwardly so far, that a man must be turned topsy-turvey to get over it; so that when he is got into the fossés, and having no assistance from without, he would as surely be shut up there as in the towers.

Within is an enclosed building, with one entrance only, secured by two centinels and three gates. That which communicates with the Castle can neither be opened from without, except it be opened likewise from within, nor *vice versa*. The turnkey and the serjeant of the guard must both concur in opening it. From thence one arrives at the towers, the only entrance to which is again barred up by three other gates, which could not be forced without artillery. All the halls which separate the four towers, where are the prisoners' apartments, have likewise gates of nearly the same thickness. Three other gates at length introduce you to them. The last of them is lined with iron. Each of them armed with two locks, and three bolts, with holdfasts
to

to prevent them from sliding, opens in a different direction from the other, so that the second bars the first, and the third the second. Such is the enclosure of this prison, whose walls are sixteen feet thick, and the roofs more than thirty in height.

These gloomy mansions would be enveloped in eternal night, without a few obscure windows, which suffer some feeble rays of light to enter. Iron bars placed in the inside of them, keep one at a distance from these narrow peep-holes. Cross bars which traverse each other, and which it is impossible to get at, intercept the air and day-light from without. There is frequently also between this grating another row of bars.

All the windows look upon the courts, or the gardens of the Dungeon, except three chambers which are within the enclosure, and built upon the top of the fossé, and below which centinels are placed. If the prisoners had even got into the courts or the garden, and kept their turnkeys in irons, a child in the guard-house without would render their success thus far of no effect. At night, the guard enters: the draw-bridges are lifted up; the gates of the tower shut and bolted, (we need not doubt that those of the prisoners are shut night and day) and the keys of them, with all the others, left in the hands of an officer, who comes in and goes out with the guard, and has no other jurisdiction in the Dungeon. Two centinels are so placed as to watch all the sides of the square flanked by the towers. A party goes the rounds every half hour under the windows; and every morning and evening, before the opening and shutting of the gates, makes the tour of the ditches, where the turnkeys themselves cannot enter without an express order. Would you not imagine that cells thus constructed, thus guarded, were impregnable?

Vulgar

Vulgar observers! you little know how much genius is necessary to make a gaoler. A Rougemont must appear to bring to perfection this sublime art, so essential to the happiness of humanity. This man, whose vocation is so well marked out by nature, has caused the windows to be raised, so as that the prisoner can neither look below, nor straight forward; and to perfect this important inclosure, he has every where constructed wooden frames in the form of a mill-hopper, which project without to half the height of the window, sometimes even to the very top, according to the situation; and besides all this, there is in the greatest part of the rooms a lattice work of wire, interwoven in the bars (e). The windows are by all these methods straightened and almost stopped up. The air is nearly intercepted. What signifies that? SECURITY, Gentlemen, SECURITY! that is the essential. A prisoner must not be suffered to die, because there is not a fresh one every day; but it is good for him not to have too much air. That of Vincennes is very sharp: it promotes a good appetite, a dangerous disposition of body, when one takes no exercise. Let us cast a look on the entry of a prisoner into these places I have been describing.

It is commonly the night when he is plunged into them; for in France they have accustomed themselves to the Spanish method, which is at least a sort of homage done by despotism to the public opinion,

(e) This does not prevent the centinels placed without from receiving orders to make the persons passing by turn their eyes away from the Dungeon; so that from the break of day they never cease repeating, *Go along your way*. But why this mummery? Without that, three-fourths of the passengers would not know that there was a Commandant at Vincennes.—[This happened to the *Translator* as often as he passed through the court; but he must observe, that the same regulation takes place at the Bastille, and probably at all the State Prisons.]

opinion, and to equity ; it is afraid of exciting too often terror or indignation : it fears lest the light of the sun should shine upon its violence. The feeble glimmering of a truly sepulchral lamp lights the footsteps of the captive. Two conductors, like those infernal Satellites placed by the poets in Hell, guide his path. Bolts without number strike his ears and his eyes : iron gates turn on their enormous hinges, and the vaulted roofs resound with this doleful harmony. A narrow, crooked, and steep staircaise prolongs the way, and multiplies the windings : he passes through vast halls, in which the trembling light, that with difficulty penetrates this ocean of darkness, gives a sight of nothing but padlocks, bolts and bars, and augments the horror of such a spectacle, and the dread which it inspires. The wretched man at length arrives at his den : he there finds a bedstead, two straw chairs, or frequently wooden ones, a broken pot, a table covered with grease ;—and what then ? Nothing. Imagine the effect produced upon his mind by the first glance he casts around him.

But M. de Rougemont is not long in making an useful diversion. He commands the turnkeys to search his new guest, and sets them the example, that they may execute it with more zeal and exactness. It must be owned that one does not expect to see a Chevalier de St. Louis perform such an office ; and the extreme astonishment excited by such a spectacle, diverts the attention perhaps very usefully.—No, I cannot pursue this strain of irony ; my heart is wrung with indignation and grief whenever I recollect the anguish of such a moment.

The unhappy sufferer is stripped of all his effects ; money, watch, toys, ruffles, pocket-book, knife, scissars : every thing is carried off. And why ? I know not. Is it to deprive him of all means

of corruption? Where is the turnkey, whom a watch (f), or a trifling sum of money would seduce? And if interest can give him over to some little civilities, will not the most dangerous temptations come from without?

Next comes a laconic and lofty injunction, to avoid making the smallest noise. *This is the house silence*, says the Commandant. Alas! the wretch to whom he speaks, asks himself whether it be not rather that of death.

After these melancholy preliminaries, the prisoner is left to himself, and in general remains a long space of time without again seeing M. de Rougemont. His turnkey who,

*Payé pour être terrible,
Et muni d'un cœur de Huron,
Réunit dans son caractère
La triple rigueur de Cerbere,
Et l'ame avare de Caron.*

GRESSET.

His turnkey comes three times a day. He, the most frequently, resembles a messenger of misfortune; for every thing is allotted in this doleful mansion. An austere physiognomy, an invincible silence, a heart inaccessible to pity, are the virtues of his profession; but it must be allowed, that the Chief surpasses them in perfections of this sort, as in authority. In vain should the prisoner interrogate him; a simple negative is the only answer he will receive. I KNOW NOTHING OF THE MATTER; this is the formula of the turnkey; as, IT IS, OR IT IS NOT THE RULE, is that of the master gaoler. It is impossible to paint to the mind the situation of
a man

(f) M. de Rougemont pretends that one might saw the bars with the springs of a watch. Might not a trial be made of this, for the perfection of mechanics, and the honour of the invention?

a man in these first moments. The reality carries its measure with it: a known misfortune wrings the heart, and extorts tears; but one strives to find a remedy, or to adopt some measure; one can decide on what one knows; one bows the head under an inevitable yoke; and if it be hard to live under necessity, there is, said Epicurus, no necessity to live; but a vague misfortune opens a boundless field to the wanderings of sorrow (g), in some measure aggravated by hope, which hinders us from freeing ourselves: uncertainty torments, and tears us without interruption, and solitude and listlessness envenom the wound.

After this terrible noviciate, which is often very long, your fate is decided on: I mean the mode of existence to which you are to be destined. If paper and books are refused you, I leave my reader to judge of your tête-à-tête with iron bars; without any thing to divert the mind, and the length of four-and-twenty divisions of the day, when sorrow drives away sleep: when one can hold conversation neither with the living nor the dead. "The
 " mind resists violence and the most excessive ills,
 " which are only transient, better than time, and
 " the continuity of listlessness; because, in the
 " first case, it can, by collecting itself, repel the
 " pain with which it is assailed; and in the latter,
 " all its energy is insufficient to bear up against
 " evils whose action is long and continued (h)." Alas! the most cruel moments of life do not reckon less in the duration of existence than the most delicious. These hours so sad, wherein chagrin devours, and listlessness consumes, contribute to fill the measure of those which are granted us by
 nature;

(g) Senec. Epist. 12, 13.

(h) *De' delitti*, § xxvii. *della pena di morte*.

nature; and they appear infinitely longer. Deplorable condition of mortals! At one moment they are madly prodigal of time, the next they are overburthened with its weight! I do not know how one escapes from the situation I describe. I do not know whether it be possible for the soul and body to support such violence for any length of time; but I believe we should be frightened, had we a faithful list of those who die in despair, or who live bereft of reason in these infernal houses.

If the permission of reading and writing be granted, the prisoner must still pass through other trials. You think, perhaps, that the Commandant is anxious to give books and paper, which cost him nothing, to the unfortunate, of whom it is the sole resource and consolation? Undeceive yourself. The turnkeys will ask twenty times, will wait twenty days even for this paper, desired with so much ardour. Observe too, that it always brought, reckoned, and marked by the hand of M. de Rougemont, six sheets at a time. As to books, that is another sort of negotiation.

M. de Rougemont, who from his brevet is at once censor of books, statesman, and sub-minister; M. de Rougemont, who dreams night and day of the means of *worthily repaying the confidence of his master*, and who, had he the eyes of Argus, would not have too many to enter into the immense details of his important place, sends a prisoner *one volume*, and never more than *one*. This is very soon read by a man who has nothing else to do. It is carried back, and M. de R. must inspect it leaf by leaf, although the turnkey either has, or ought to have examined it; and the second volume is not delivered, until this double inquisition, real or feigned, has taken place. But as the Commandant, wholly devoted to his duties, to his functions,

functions, passes six days out of the seven *at Paris*, we may suppose what delays the poor solitary prisoner must undergo. No book is admitted which is not marked *with privilege and approbation*; for M. de R. is too much occupied to be a very literary man; but he can read print; so he looks at the bottom of the title page, and censures without mercy whatever is not adorned with the royal seal, were it an edition of the most approved book printed in another country. Observe that this stroke of police is purely of his own invention: but besides that many books, printed with a tacit permission, bear neither *privilege and approbation*, this precaution has not a shadow of reason, but with respect to such persons as are here for having displeased the government by their writings. As for the rest, why diminish, as much as possible, their only consolation? Is it not in some sort to strip them of their thought, their sole remaining possession? Certainly, there are men, amongst those who are detained in these places, on which a very gentle name is bestowed when they are called *prisons*, who would advantageously employ their sad leisure, if they had a few books, if they were not disgusted with any regular work, by eternal contradictions. But what signifies that to the executioner, who is incessantly occupied in multiplying their sufferings? He is the soldier of Marcellus, who, to divert Archimedes from his problem, strikes a dagger to his breast. There is no library belonging to the Dungeon of Vincennes, and all a prisoner's literary resources consist in a small number of volumes, frequently old ones, lent by an old Jansenist. Judge of the choice of this collection, and of the situation of a man who remains whole months, nay years in this house! It is forbidden to shew the list of the books, which the prisoner must therefore
name

name at random: he cannot foresee what they are able to supply him with, and frequently asks for what they have not. It has happened to me twenty times to make out lists of fifty titles, which were Hebrew, for our poor librarian; and I have been refused the works of the Fathers of the Church, because they were not in the vulgar tongue; and the originals of certain well-known books, translated with the approbation of government, because, said they, they were ignorant of what the text contained. The chirurgion-major is forbid to lend anatomical treatises, for which I cannot divine the pretext; as to reason there can be none. I found it impossible, in short, to procure musical or mathematical instruments, or brushes or colours. (i). Every thing which could tend to diminish the horror of this abode, is perpetually prohibited by him who presides over it, however he may colour his refusals: besides, it is he alone who receives the allowance for the prisoners, and keeps it; he alone can purchase what he permits them to desire; and as the money in his hands evaporates in an instant, one proffers vain petitions for whole months; one turns tired of it: one suffers; and one holds one's tongue.

We have seen if the hour of repast be delicious; let us see the exercise which is granted to some of the prisoners. The most favoured (and that is by much the smallest number) walk an hour every day in a garden of about twenty paces long, tête-à-tête with their turnkey, who must neither quit them for a moment, nor speak a word to them. He waits on the other side of the garden, on the side next the towers; for every thing is determined by the exact Commandant. The prisoner and his
guard

(i) Since I wrote this, M. de Noir was pleased to procure me these conveniences.

guard march parallel with each other; and if the first speaks, the other must not answer. The clock strikes, and he regains his cavern. You may suppose how a turnkey is tired of these walks, and according to this regulation, how impossible it would be to augment either the number or the duration of them, especially as M. de Rougement has thought proper to give one of these places to his valet de chambre, who continuing much against his will to do his duty as a servant, cannot do the half of his business, the surplus of which falls on his two comrades. But more clearly to shew the inutility of this mutual restraint in the walks, it is proper to observe, that the garden is seen from all parts by the turnkeys; that the walls are fifty feet high; that beyond them are the ditches I have described, and that consequently the poor walker, unless some angel lent him wings, can neither get over one or the other of these barriers. The greatest number never enter this garden, without a particular order from M. de Rougement, whom the turnkeys frequently do not see for a whole week, even after letting him know they want to speak to him. At the moment I am writing, half the prisoners are absolutely debarred the use of it; and there is a man in the Dungeon of Vincennes, who for ten or fifteen years has never stirred out of his room of ten feet square. These unfortunate men (for there are more than one) may say with Milton:

*Seasons return; but not to me returns
Day, or the sweet approach of ev'n, or morn,
Or sight of vernal bloom, or summer's rose,
Or flocks, or herds, or human face divine;
But clouds instead, and ever-during dark
Surrounds me.*

Thus

Thus imitated by *Racine the Son* :

- Tout meurt & tout renît. L'automne tous les ans
- Fait place au triste hiver que fuit le doux printems ;
- Les zéphirs en tous lieux ramènent la verdure,
- Aux arbres dépouillés ils rendent leur parure ;
- Et par l'ordre constant d' une agréable loi,
- Tout revient ; mais le jour ne revient pas pour moi.
- Fleurs, qui nous étalez vos peintures nouvelles ;
- Roses, que du matin la fraîcheur rend si belles ;
- Vous, filles de l'aurore, éclatantes couleurs,
- Vous ne pouvez donc plus m'adoucir mes malheurs ?
- O troupeaux, que l'œil fuit bondissans dans la plaine,
- Vos jeux ne pourront plus m'égayer dans ma peine !
- Où vais-je dans ma perte étendre mes regrets,
- Lorsque de l'homme, hélas ! je ne vois plus les traits ?
- Je ne vois plus ce front, siege auguste où Dieu même
- Fait briller un rayon de sa beauté suprême.
- Dans un affreux néant tout me semble abymé,
- Et pour moi la nature est un livre fermé.

Such is the life we lead in this sepulchre, called a Castle, where avenging sorrows, and pale disease, and a sad and premature old age, have fixed their abode (k), and from whence the unhappy man seldom departs, but to find that sure asylum, where he can brave tyranny; where grief is no more; where even superstition loses her terrors; where God, more indulgent and more just than men, pardons our infirmities, and punishes our tyrants; where plunged in an eternal sleep, the wretched cease to complain, the wicked to persecute, the lover to waste himself in fruitless desires, and to pour forth his tears.—Cruel tears, which depress the heart, without administering any comfort (l)!

They

(k) *Luctus & ultrices posuere cubilia curæ ;
Pallente/que habitant morbi, tristisque Senectus.*

(Virgil, *Eneid* 6.)

(l) *I must weep ; but they are cruel tears.*

A happy

They whom a happier destiny restores to society, to their family, to their friends, receive on their quitting their prison a treatment, which would make them for ever remember the man from whom they are escaping, were not his past proceedings already indelibly engraven on their memory. He renews the precaution of searching them, an operation much more humiliating doubtless for him who stoops to such vile practices, than for him who sees himself forced to submit to them. You may conceive from what I have already stated, that his real object cannot be the dread of communication between the prisoners, notwithstanding he alleges it has his pretext. After an exact research, which the Commandant does not himself disdain to make, so much does he think himself interested in it, he solicits, he requires the captive, over whom he is exercising his last act of empire, *to take an oath*, that he never will reveal the gloomy history of his prison. Doubtless this impracticable gaoler, who is as ignorant of shame as of honour, has read the history of the inquisition: he studies it undoubtedly; he makes it the subject of his meditations, and his administration is regulated on that excellent model. I do not know whether he finds many beings cowardly enough to take such an oath; but on that supposition, the mind must shrink and diminish strongly in the bosom of servitude; for what is the reptile that will not rise up against the heel that crushes it? O men! *voluntary slaves make more tyrants, than tyrants make involuntary*

VOL. II.

A a

slaves

A happy expression of *Shakespeare*, which M. de Voltaire has admirably embellished in *Zaire*:

Voilà les premiers pleurs qui coulent de mes yeux :
 Tu vois mon sort ; tu vois la honte où je me livre ;
 Mais ces pleurs sont cruels & la mort va les suivre.

slaves (m)! How long shall this eternal truth be useless to you?

Once in a month, and often less frequently, the Commandant sees, not the prisoners, but some of the prisoners. Does one of them speak to him of his victuals:—*Ah! Sir, you are the only person who complains of them. Really, your murmurs astonish me. I do not merit this treatment. I pay the most uncommon attention to them: I do not believe there is any fraud: the turnkeys are very honest; besides I watch them narrowly.* The turnkeys are out of the question. Where could they find worse aliment to substitute for ours?—Do you persist, he calls it injustice, caprice, anger; says *that you are a grumbler*; for in his opinion, to complain of him, is to speak against the government; and translating into his language the clamours of those who find fault with the food, that is to say, with him, he informs against them perhaps at the police, as murmurers who blaspheme against *authority*. I REPRESENT THE KING, said he one day to a prisoner. You, Sir? Yes, me. The prisoner fixes his eyes on him, measures him from head to foot (the transition is not long) turns round upon his heel, and exclaims, *faith, he is drolly represented!* The reader may imagine whether he paid for this sarcasm. But what! Because the rogue is inseparable from the man, the man is inseparable from his place! Because one exclaims against the robbery, one is wanting in respect to the office! At this rate what infamies will there not spring up under the shadow of authority? Ridiculous pretension, thus to unite what is the vilest and the most respectable!

If

If the prisoner M. de R. visits be a man who disputes nothing with him, who asks nothing from him, who suffers in silence, the Commandant exhausts himself in offers of service: he promises so much as to deceive nobody. Alas! how can he deceive those who see him so barbarously covetous, so inexorably pitiless on matters which have no connection with security, which depend only on him, and which cost him nothing!—A prisoner's money is a deposit in his hands. Disgusted with the foetid nourishment that is brought him every day, the unfortunate man wishes for some chocolate, coffee, or fruit (n), any thing, in short, to please his palate. He asks for it; the sure method of not obtaining it. In vain does he disguise this real want, under the name of fancy. That implies a bitter reflection on the management of the Chief. It is a crime to wish, though he be in want of every thing. A demand of any kind infallibly puts the Commandant out of humour. If his request be contained in a letter addressed to him, there is no answer; for he puts himself on the footing of a Minister; the prisoner must wait till he visits him. If he does not then refuse, he promises to give an order to the turnkey on going out; instead of which he gives him a strict prohibition against it. The prisoner, who cannot foresee so wanton a duplicity, presses the turnkey, who eludes it for whole months, to avoid disobedience, without however avowing his instructions. The prisoner entreats, finds fault, murmurs; and at length

A a 2

guesles

(n) A prisoner to have some cherries, begs them to be substituted for one of his dishes. By favour it is done. They send him half a pound. He complains it is too little. *Let him take his usual dish, then*, says the Commandant. Now half a pound of cherries costs a *halfpenny*. Let the reader judge how our food is valued.

guesses the truth, sighs, and is silent if he can (o). At other times M. de Rougemont, not less cruel, but more frank, refuses: he has the courage to be inhuman without a mask. What reason does he give for refusing a thing so indifferent in itself? He rarely condescends to give any; and then that Spartan formula of—IT IS, OR IT IS NOT THE RULE, extricates him from his embarrassment, or gives him time to seek for another answer. He will say, that what one fancies may hurt the health. What! does his brevet then make him a physician also? And is the food he gives the most wholesome, because it is the most disgusting? It is certain that it provokes to abstinence; but still a man must eat to live. Of what use then is that allowance from his friends so strenuously solicited, and obtained sometimes with such difficulty? He will find it on coming out. Admirable subterfuge! When he is in want of nothing, he will then find resources against disgust, famine, and listlessness!

That the nourishment should be excessively bad, that M. de Rougemont should have the most illicit and most extravagant profits on that head, may be accounted for. This man wants method and understanding. Constantly goaded on by vanity, he wishes to spend, and knows not how to calculate. He has never any money; never any provisions; no exactness in fulfilling his engagements: he is obliged therefore to shut his eyes on the robberies of his own attendants, and to be himself continually pillaging, because he is continually squandering: he is like the tun of the Danaïdes, which always filled is constantly running out. All this is explicable.

(o) There is a mode of remedying that: let the turnkeys advance the money, which he *permits* them sometimes to do; but M. de Rougemont is so exact a paymaster, that no person chooses to have recourse to this expedient.

explicable. But why wanton and useless barbarities? Is it only because the Dæmon of Pride is perpetually suggesting to him new modes of oppression to signalize his authority, which, after his money, is his idol? Or is it because his soul, if he really has a soul, is a composition of cruelty, and that his greatest enjoyment consists in doing harm? Let any one, for example, tell me, what can be the object of a man, who seeing fine fruit in the prisoner's garden, cuts down the trees that bear them? Observe too, that, in this case, his conduct does not proceed from avarice; for he leaves the fruit to rot, and destroys the trees upon the spot, instead of transplanting them. Why destroy fine beds of flowers, and hinder the unhappy prisoners from cultivating them, even with a wooden spade? I could detail a hundred similar traits; but the following are still more odious proceedings:

Does a prisoner ask for a looking-glass:—IT IS AGAINST THE RULE. But can one make a breach in the walls, or break down the gates with a looking-glass? No; but one may correspond. With whom? How? My window is shut up with a frame; it is so thick that I could not get near that peep-hole, even if there were not a triple row of bars. What optical trick are you afraid of my attempting? It is against the rule.—What, to comb myself? Do it by feeling. The sight of your visage might disturb you: the imagination is apt to be struck; you would imagine yourself changed. Do not I feel myself then? And if I want to look at myself, will not a basin of water answer the purpose? IT IS AGAINST THE RULE. I WILL NOT BETRAY MY DUTY (p).

Obliged

(p) It was to myself this happened, and it filled me with indignation. I determined to carry it with a high hand with this man,

Obliged to tear his victuals with his fingers, and a dirty tin fork, does he ask for a blunt, weak, small, short knife of any kind ;—Ha ! Sir, a knife ? You do not think of what you are asking for. Knives to a prisoner ! Do you see any knives at the

man, or to strive to unmask him to his superiors, whatever might be the consequence. As one is more master of one's self in writing than in speaking, I pressed the matter no further ; but the moment M. de Rougemont was gone out, I sent him the following letter. Let the reader judge of the character and the heart of him, from whom it is impossible to obtain any thing without assuming this tone.

“ I never imagined until this moment, Sir, that you could be serious in refusing me a looking-glass, and I imputed it to forgetfulness ; but now that you have formally declared to me, that it is against the rule, I have the honour to represent to you,

• “ I. That I cannot by any means comprehend the expression in your mouth of, *It is, or it is not against the rule*, which serves to cover with a sacred veil every thing that passes in this house. I know nobody but the Minister or Counsellor of State entrusted with our inspection, who has the right of laying down *rules* here, at least with respect to the prisoners. All the rest are our guards, and not our legislators. Now the Minister and the Lieutenant of the Police certainly do not trouble themselves with such trifles. It is evident to me that they do not refuse the prisoners any consolations which do not affect the security of the prison, for that would be tyranny, and wanton tyranny, and I do not believe our Ministers are tyrants, nor that men in general are tyrants for the sole pleasure of being so. If such monsters do exist, their number should be very small ; for all the rest of mankind have an essential interest in destroying them.

“ II. The reason you have been pleased to give me, *that one may carry on a correspondence with a looking-glass*, has not the shadow of probability ; nor am I a child to be amused with it. I do not know whether your mathematical and optical knowledge be very extensive ; but I defy all the mathematicians and opticians in the world to prove to me that my window, which is precisely a peep-hole, collateral with nothing, since it is in the convexity of a tower, which is not opposite to any other part of the prison, since it is in the external enclosure, can be susceptible

“ ble

the Bastile? What harm can I do with such a knife as I ask you for? Bore holes, saw the bars? That is impossible. Kill myself? Am I not always able to do that? The liberty of depriving myself of life is the only one of which *Despotism* cannot deprive me.

Kill

“ble of the least optical trick to enable me to give or receive signals by means of a mirror. That is, I believe, the only manner in which it could be made use of, for I have not yet heard that a mirror is a speaking trumpet.

“III. Were it even practicable to make or perceive signs from my window by means of a mirror, (which you call *corresponding*) still would not this be a reason for refusing me; for it may be fixed up in my chamber.

“IV. But were this rule for the exclusion of mirrors really the order of the superiors of this house, it must have arisen from a false representation, of which I am sure I could convince them. When I shall say to them, *It is physically impossible for me to make any dangerous use of a looking-glass: I am obliged to comb myself by feeling, and wholly to neglect the care of my teeth. I have been long in want of a plaister exactly at the corner of my mouth, which I must apply in the most disgusting manner, my hands not being guided by my sight. The letter of your ordinances is made use of, to torment us, instead of attending to the spirit of them; the most innocent and the simplest demands are rejected with the words—IT IS AGAINST THE RULE. The most tyrannical prescriptions erected into laws by the sole words—IT IS THE RULE. These two formulas, which constitute the jurisprudence of this house, are a battle horse which tramples under foot and crushes us.* When I shall write thus to them, to which, you know, much more may be added, I am persuaded they will grant me a looking-glass. Great, important, unspeakable favour truly!

“I desire therefore, Sir, you will determine; for *I'll see*, signifies nothing; and yet it is the mildest expression I have heard come from your mouth. It may still lead me on ten months more, for it is not less since I first asked for a mirror, and it is only this day you have thought proper to give an answer. Three months ago I desired to have my hair cut, which are fallen into my mouth; your answer was, *I'll see*; and they are still uncut. I asked for a knife four months before I obtained it. The first time I asked for it, you answered me, *I'll see*, and an order of the police was necessary to make you *see*. A moment
“only

Kill my turnkey? If I were a madman, could not I murder him with a log of wood? All these reasons, Sir, are useless. IT IS AGAINST THE RULE. But by whom is the rule established? By him, by him alone, who thinks he cannot pay his court better than by cavilling the prisoner out of the very air he breathes. A tyrant heart! He thinks he has to deal with tyrant Ministers, and tyrant Princesses.

A pri-

“only is necessary, permit me to tell you, Sir, to *see* whether you grant me a looking glass, or not. If this concession exceeds your power, I shall beg it of M. le Noir, however unwilling I am to trouble him with such trifles. If it be in your power, I require it from your justice. Do you think it an affair so very serious as to require much meditation? No, you do not think so; you only answer me with, *I'll see*, therefore, to gain time. What then! Are we not already sufficiently watched, without your sporting with our most urgent and most simple wants? I am aware, Sir, that in your place one contracts the habit of saying no; but a sensible man ought to reflect upon these NOES, especially when they are addressed to a person who is neither turbulent, nor indiscreet, nor importunate, nor stupid, nor servile.

“In a word, Sir, this question of giving me a mirror, which I am glad to have an opportunity of explaining to you at some length, that we may, once for all, understand each other, if possible, amounts to this, *Can you, or can you not?* If you can, why refuse me? I have not deserved your ill-humour, (it is ungenerous to shew any when one is the strongest) and I have a claim on your equity.

“I have the honour to be, &c.

An hour after I had a glass. Let this stupid tyrant reflect ever so little on his unequal and fluctuating conduct, which leads him incessantly from the most insulting pride to the meanest concessions, to the lowest precautions: he must see that he gives the key of his conscience, which is FEAR, and that one can have no obligation to him for what he grants, since it is only obtained by menaces. It must not be imagined, however, that this method succeeds with every body: an irreproachable conduct, the privilege of writing, an inflexible frankness and resolution, and above all, the kindness I have experienced from M. le Noir, have given me many advantages over the companions of my misfortune.

A prisoner's trunk contains effects which are of indispensable necessity : his cloaths, his linen, his combs. Perhaps he has not even a change of them. Perhaps he is obliged to wear a camblet coat in winter (q). Why not give him what he can enjoy, without danger for the security of the prison ? An inventory must be taken. Alas ! why this inventory ? Will any body rob the prisoner in a chamber from which he never stirs ? The RULE, Sir ; order, probity, honour ! Well, conscientious gaoler, are many hours necessary to take this inventory ? Ay, certainly, hours, and months are not sufficient ; there are locks on these trunks, and iron work ; they must be taken to pieces. Call a locksmith then. Oh ! to be sure one has time to throw away on that, to attend to these minutiae, in a place where one must be continually running about. How, *running about* ? For my part, I was foolish enough to think that of all places, your's was the most sedentary. What then, must not I be at Paris, at the Court, to observe, to propose, to give an account, *to do business with the Minister, with the Master* ? (How do I know *but the Princes of the Blood are waiting for him* (r). Very well ; but the prisoner's cloaths out of season falls into rags.—What signifies it ; who does he see ? True, indeed ; but he wishes to be clad ; he wants stockings ; he desires to be clean for his own sake, for his health. Very well, I will get some made.—When ? God, and God alone, knows that. But why

(q) This is the exact history of what happened to the writer. He arrived at Vincennes in summer with a portmanteau. A year past after his detention before he could have his trunks, which were however all that time in the Dungeons.

(r) He said one day to a prisoner, *I have only a minute to give you ; for the Duke of Orleans is waiting for me* ; and I WAS THAT PRISONER.

why this useless expence? Why lay out the money allotted for the maintenance of a prisoner in purchasing new cloaths, whilst he has already plenty rotting in his trunks? Alas! you do not know all. These unfortunate trunks contain some books. Books! Good God! Books! Then indeed they are proscribed, infallibly proscribed for ever. It is to no purpose they have been examined at the police. Foreign books enter not into the Dungeon of Vincennes, where they the *Imitation of Jesus Christ*. They would be afraid lest that of *Beaufort* should not be far off (r).

It would be wrong, however, to suppose that all this rigour proceeded from the austerity of M. de Rougemont's character. In a pretty smart altercation with one of his substitutes, the latter talking of appealing to the Lieutenant of Police, *he assured him that he only did business with the MASTER and his Ministers*. "I did not know that," replied the other coolly: "but as I am not called to so high a destiny, you will have no objection to my putting myself under the protection of my immediate superior, and desiring him to judge between us." From that instant he loaded him with caresses, commended, and applauded him, and he obtained every thing he wished for. It is then that men without reproach, and who can make themselves be heard, are very sure of bringing a man to reason, who is not ignorant that his only safeguard is in that silence to which he has reduced every body who has to do with him. But what must the unhappy prisoners do, who have no other organ than the very author of their miseries? The

(s) It is known that when the *Great Condé* was shut up in the Dungeon of Vincennes, he answered the persons, who asked him *what books he desired*, *THE IMITATION OF BEAUFORT*. M. de Beaufort had escaped from that prison some time before.

The greatest part of them tremble, when he lavishes these imposing flourishes of MINISTERS, and MASTER. They prostrate themselves before their gaoler, whose importance and court-favour they admire in terror. *I will talk to the king about it*, said Bontems, and this habit was become so forcible in him, that a courtier having one day enquired how his wife did; he answered, *I will talk to the King about it*. This nonsense did at least no harm to any body; but when M. de Rougemont sends away a turnkey, who has been in vain looking for him for a week to communicate the wants of a prisoner, with *I have not time, Sir; let me alone; the Minister is waiting for me*. Does he imagine that the prisoner is very well satisfied with this *lazzi*? Observe that the turnkey cannot execute the simplest or the most indispensable commission without an express order. Does a prisoner want his head shaved, the surgeon-major dares not do it without permission: he asks it: the Commandant gravely answers him, *I will speak of it to the Minister*. This however is only a disagreeable circumstance for the prisoner: but another is racked by nephritic cholics; the warm bath is absolutely necessary for him. M. de Rougemont is enquired after: he is not to be found: he is watched in vain: a letter is written to him, and he at length makes his appearance. *I shall ask for orders*, says he coldly. But, Sir, replies the surgeon, four and twenty hours may decide on the man's life. Sir, I will make no innovations without orders.—I knew an august senator who would never allow the windows of the chamber he presided in to be mended, *because*, he said, *he did not like innovations*. But in that case, at most he might expose his brethren to catch cold; but the wretched captive would have expired perhaps in the most excruciating torments, had not the surgeon

surgeon with firmness told the savage Commandant that he charged the events arising from delay, on whoever should require him to retard a very urgent remedy ; and that he should be obliged to give an account of the affair to the King's commissary.

At the sight of these multiplied and frequently barbarous contradictions, a lively and susceptible being ought to keep a guard upon himself ; for he may ruin himself by a fit of passion. A prudent and moderate man holds his tongue, and sighs doubly for his liberty, whether for its intrinsic worth, or to escape from the claws of such a vulture.

How much must a man, however, be master of himself, to listen patiently to such absurdities and falsehoods, which only become the more absurd from their frequent repetition, without exciting less indignation ! Does M. de Rougemont observe that one lends an attentive ear to him, he loads you with ill woven fables, and the most ridiculous rhodomontade, displayed in the stile of a lacquey, and accompanied with the most grotesque attitudes. He wearies you with talking of his behaviour (just Heaven, what behaviour !) ; of his generosity (the reader has seen some samples of it) ; of his courageous beneficence (as if the most imperious of tyrants was not invariably, in case of need, the vilest of all slaves) “ Sir, (says he) I have a hundred
“ times declared to the minister, that if I could
“ not do good in my place (it is well chosen for
“ such an object !) I would return my brevet the
“ next day. These sentiments, which I loudly
“ proclaim, have procured me the general
“ esteem.” And from thence passing to the pompous parade of his services, of his qualities, his friends, his fortune, he proceeds to reasonings
which

which are as destitute of good sense as they are of truth. Fortunate is the patient who listens to him, if he be only wearied ! But when he hears the man, who so barbarously aggravates his misery, who plunders with so much effrontery his wretched victims say, *I injure my fortune in my place*, (that is true, but I have partly said how) *it is burthensome to me : it is the most painful and the most disagreeable part of my function to furnish nutriment ; but the interest of the prisoners requires it*, (what goodness !) *otherwise they would be pillaged* (in that case they would have something to supply that pillage with, and their situation would be greatly mended) ; *as for me*, I ADD PART OF MY OWN TO THEIRS (on my honour, he has said this ten times to me and twenty others) ; *I only esteem this command on account of the lustre I derive from so honourable an establishment* (this saying is either very pleasant, or very modest), *and above all, from the confidence of the Ministers and the Master* (vile and stupid being, who does not know that an honest man has no master, but his duty !).—Ah ! reader, believe me, the trait that makes you laugh, wounds to the heart the man who knows all the base and furious manœuvres of the odious tyrant who thus harangues us. An open and generous man must make a great effort on himself, to hear another patiently, for whom he has a sovereign contempt, and from whom he receives so many daily injuries, boast of his sensibility, his disinterestedness, and go a begging for thanks and gratitude.

I pass over in silence a hundred vexations, the detail of which might appear trivial to the indifferent, yet are cruelly grievous for those who already suffer in so many ways ; but nothing can be compared with the heavy grievances, so clear and specific, which I have related, and they are such as
the

the government can redress. It is evident that the obstacles, the tormenting trifles, in a word, every thing that results from the arbitrary, imperious, and captious humour of this man, cannot be entirely restrained by his superiors. That is an inconvenience attached to a bad choice, to the very nature of the institution of these houses. The Lieutenant of Police will say, that overloaded as he is, he can only lay down a general plan, without entering into such minute particulars. Besides, a troublesome and bustling man, such as the present Commandant of Vincennes, might embarrass him perhaps by saying, *I cannot answer for my prisoners, if I am restricted in my interior administration*. But pecuniary frauds and impositions have no connection with security. A prisoner may be at once well fed, and well guarded. A prisoner ought not to be traduced with impunity, and arbitrarily punished. Now as all these vices are connected with the constitution of State Prisons, it is equally easy to suspect, to ascertain, and remedy them. This is what remains for me to do, to compleat the task I undertook in this work.

C H A P. IV.

Vices in the constitution of State Prisons. Means of ascertaining the persecutions carried on in them, and of applying a remedy.

A MOMENT's reflection only is necessary to perceive that it is unreasonable to expect the truth from the man who has an interest in concealing or disguising it ; equity from him who judges in his own cause ; or impartiality from a subaltern who must either accuse himself or others.

A moderate degree of attention will shew that it is contrary to prudence to entrust the power of doing harm with him whose interest it is to do it. This is the inexhaustible source of all the horrors of the Inquisition. It is the language of twenty centuries, that a limited being, *who can do what he chooses, seldom chooses to do what he ought.*

The Commandant of Vincennes has an interest in concealing the truth, since it is in every sense disadvantageous to him ; and the more it is so, the more urgent does that interest become. He is judge in his own cause, because every complaint against his management must be carried to himself. He must either accuse himself or others ; for should he give an account of the complaints of the prisoners, he must declare at the same time that they are, or are not, founded. If he admit that they are just, he accuses himself. If he accuse them of calumny, he accuses others.

M. de

M. de Rougemont has the power and an interest to do ill. It is his interest, as the greater part of his fortune is founded on the odious manœuvres I am exposing to the government. He has the power, since he alone sees the prisoners, and can check, or suppress their complaints at his pleasure.

It is easy to ascertain the truth of the principal facts contained in this work ; for who will really believe that it is possible to conceal what passes at Vincennes from the Lieutenant of Police, who, thanks to the *Civil Inquisition* established in Paris, penetrates with an inconceivable facility into domestic secrets, discovers intrigues the most profoundly concealed, and does not remain ignorant of a single anecdote, even of the most simple curiosity, which he chooses to know ? In vain does M. de Rougemont wrap himself up in complicated mystery ; his only safeguard is the secrecy observed in this house, from which he dismisses with unwearied care every body who is not wholly dependent on him ; but this secrecy can never be so to any one of his superiors who wishes to unfold it.

To come at this, I shall not propose any unfair methods, which, from their obliquity, may impede the truth ; for subalterns may reasonably be suspected of vindictive motives in their reports respecting the conduct of their chief ; and informations of that kind must necessarily prove injurious to the service. Strange constitution, wherein it is equally dangerous to encourage and to reject informers ! But here is a sure method, at once secret, infallible, and impossible to discover or suspect (a), which leaves no doubt, and leads directly

(a) But it will be said, is not your opinion public enough ? Well ! M. de Rougemont cannot profit by it without his prisoners reaping also some advantage ; and I shall have at least in part fulfilled my object.

ly to the truth. Make choice of a person unknown to every body about this house ; forge some crime for him, or without being at that pains, smite him with a Lettre de Cachet ; it is not the custom to assign reasons for them. Let him be conveyed to Vincennes, charged with your secret orders : let him stay long enough in that prison to ascertain that the observations he shall there make, are not the result of transient circumstances : let him keep an exact journal of his food ; and let him take especial care to have no correspondence with any person who might inspire the least diffidence in the Commandant. What will you not discover ? The trade of a spy will be for once an honest calling ! An arbitrary order will have been a just one ! There is not a man of sensibility, who, to render an essential service to so many unfortunate persons, and to alleviate their hard fate, would hesitate to partake of it with them for a month ; nor who would scruple with zeal, and without reluctance, to make a declaration, which could have nothing in common with the infamous character of an informer. Then would the Minister know the truth. When the odious acts of injustice which are exercised here, and a great part of which I am either ignorant of, or do not choose to reveal, lest I hurt those who informed me of what I have not myself experienced ; when these cruel persecutions shall be unveiled to him in all their horrors, he will shudder at having been so long deceived, if he recollects that the prisoners are men. At least it may occur to him, that in such a constitution as ours, every citizen is exposed to the same fate ; that men in office, more than others, are exposed to storms ; that the loftiest summit is first struck by lightning (a truth admitted in all times, and which the torture of greatness extorted from Mecenas, the mi-

nister and favourite of the Master of the World), and that he himself, the distributor of so many Lettres de Cachet, may one day smart under their severity (b).

But let us impute purer sentiments to him : let us hope that the habit of despotism has not dried up every heart. Let him once be informed of the abuses that prevail in the internal administration of State Prisons, he will apply the remedy which naturally presents itself.

Is it necessary that the gaolers of State Prisons should be also the purveyors ? Why invite a man, to whom the government is obliged to grant an authority almost absolute ; why invite him, I say, to injustice, by the powerful bait of avarice ? There is an unanimous outcry against the exactions occasioned by *futtling* (c) ; the Commandants of forts, however, where that practice is established, can be at most suspected of protecting the futtlers either as persons farming this privilege under them, or in proportion to the measures of wine they receive from them. In the first case, the privileges farmed out are at least clearly fixed and defined. As for the proportion they receive, it is very moderate, and it would be acting a very vile part, at a cheap rate indeed, to commit injustice for so trifling a consideration.

They who at the head of prisons have no farmers under them, the prison is their property, which they

(b) It would be of great service to the unhappy persons smitten without pity, by arbitrary orders, if one could say more frequently to Ministers, what Pliny said to Trajan : *Vixisti nobis cum periclitatus es ; timuisti : quæ nunc erat innocentium vita scis & expertus es, quanto opere detestentur malos principes, etiam qui malos faciunt. Meministi quæ optare nobiscum, quæ sis queri solitus ; nam privato judicio principem geris.* (Paneg.)

(c) Privileged futtling-houses in the forts, for which the proprietors pay an annual sum, proportionably divided amongst the staff-officers of the place.

they turn to their own account ; their profits are personal and direct. Let the prisoner be well or ill fed in the ordinary castles, the profit of the chief is still the same ; it is independent of all the plunder of his underlings. In State Prisons, the place is worth as much as a man can make of it ; and more or less is made of it, as they furnish *less*, or of a *worse quality*.

In the other forts, one has for one's money what one asks for, paying dearly for it perhaps (d) ; but it is to be had, in short, for paying for it. A bargain is made ; the suttler contracts a known engagement, which he cannot evade. In State Prisons the price is fixed ; the provision regulated by the purveyor, and necessarily accepted by the prisoner. No reciprocal agreement ; the law is made on one side, and must be acquiesced in on the other. In the one case, it is at the most bestowing a partiality on a tradesman, who will readily abuse the favour ; but whom his situation holds in a state of strict dependence ; of whom too, one is not afraid of complaining, who is treated according to his merit, and like every other tradesman. In the other, it is a superior who regulates for himself, who adds to the interested views of a servant, the authority of a master ; who looks upon every reproach against his cook, as personal to himself, and has the power of punishing it as an outrage. It is the wolf quarrelling with the lamb. If his victim justifies himself on one point, he attacks him on another.—How can he be possibly in the right ? He who is so weak !—How is it possible for a Commandant to make a concession ? He who is so

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strong !

(d) I have seen however in one of the forts near Marfeilles, where every article is as dear as at Paris, prisoners better fed than those of Vincennes for thirty-six livres a month ; and for fifty-four livres, *I was myself* infinitely better off there.

strong!—Who can resist the eloquence of bolts and dungeons?

What! because State Prisons are infinitely more rigorous than others, does it follow that the plunder committed in them should be more excessive, much more palpable, authorized, and even without a remedy? Because their wretched inhabitants are infinitely more unfortunate than other prisoners, must they be infinitely worse fed? Because these prisons are under the immediate inspection of the Ministers, and in their very neighbourhood, must they be worse managed, and conceal the most shameful pillage? Because the keepers of these sorrowful abodes are gaolers in laced cloaths, are they superior to all decency, all order, and all censure? Because they receive enormous emoluments, are they to be permitted enormous robberies? Their brevet then is an indefinite letter of favour! Their prerogative a patronized monopoly; and the authority with which they are entrusted, an exclusive privilege of exercising injustice with impunity!

If a private contractor, wholly detached from the interior administration of State Prisons, were employed to furnish them with necessaries, he would be strictly watched by the Commandant, loudly complained of by his subalterns, boldly pursued by the prisoners, and the King would pay less for having them well fed; for the advantage a victualler would find in the certain and daily consumption of a considerable quantity of articles is evident, and how much better he could afford to supply them than a man who is a stranger to the business. But *Secresy*. What! still this terrible word *SECRECY*? Let it not fascinate your sight; or rather let it not serve as a pretext. Let us reason, and we shall see how

how my proposed arrangement militates with secrecy.

Cannot a victualler provide so many dinners and suppers every day without knowing who they are for? Is not M. de Rougemont's cook already in the important secret of the number of portions consumed daily in the Dungeon? Does not the baker know how many loaves he delivers? The shoemaker how many pair of shoes? The washerwoman how much linen she receives, each parcel of which is numbered as the chambers, which furnishes a state of the number which are occupied? Are these the persons of the same texture with the rest of mankind, or are they framed expressly for the SECRET, because M. de Rougemont has selected them? One would be apt to imagine, indeed, that his favourites and servants are of a privileged race of mortals; for he has obtained the possession of a garden of fifty-two arpents, under the pretext that the King's gardener had, or might have, conversations with certain prisoners. But do not think this garden has become uncultivated since he had it in his hands (e). He keeps five labourers in it, men and women; but they are in his pay, and consequently deaf, dumb, and incorruptible. I do not know whether M. de Rougemont be *possessed by the Demon of Propriety*, so as to believe it; but I flatter myself that every body else will find the pretext only specious and convenient, and will agree with me that the same secret may be safely entrusted with other workmen, that can be kept by those of the Commandant.

In vain do you revolve it in your mind in every sense. The secret depends, and always will depend on the turnkeys. If they are inclined, if they dare to betray it, they can do it every moment,

(e) Since this was written, a part of this garden was taken from M. de Rougemont in 1779; but he has still twenty arpents of it.

ment, because they necessarily have the opportunity of seeing the prisoner, without a witness, and of going out. In vain are they prohibited by a ridiculous mummary from talking with the prisoners on other subjects than their wants, and from naming them but by the number of their apartments: if they can make themselves dumb, they cannot make themselves deaf, and they must know the name, and perhaps the affairs, of every person under their care. If you had any prisoners of real importance, and with respect to whom secrecy were really essential, you will not trust them to mercenaries so ill paid, who, besides being limited in their ambition, their desires, and their wants, are in general the most incorruptible. If you trust them, they would be gained; others will be so likewise; and you well know, that you were, that you are, and that you will always be so in such cases. It may be supposed that I do not speak of the present time, even if I knew any such instances; but read the memoirs of Cardinal de Retz, of Foly, of La Porte, of Madame de Staal, and many others. You will see that La Porte, the principal organ of the correspondencies of Ann of Austria, kept always *in sight* at the Bastile, persecuted by the active and implacable Richelieu, carried on a literary intercourse with the Queen, who was herself a prisoner (f). You will see that the Duke de Beaufort

(f) The Commandeur de Jars, prisoner at the Bastile, apprized by the intervention of Madame de Villarceaux, employed by Madame de Hautefort, who was devoted to the Queen, gained the valet of another prisoner, named the Abbé de Trois, who in presence even of a centinel, choosing his moment, communicated with other prisoners lodged above *de la Porte*. They made a hole in their floor, through which they passed all the letters from without, by a thread to La Porte, and every thing necessary for him to answer with, whilst the soldier slept, &c. This intrigue perhaps saved Ann of Austria from being repudiated, or at least from being sent back to Spain by Louis XIII. by furnishing her with the means of combining her measures with the faithful La Porte. (See his Memoirs, p. 121 to 201.)

Beaufort escaped from Vincennes by the assistance of a man placed about his person by his enemies. You will see that the savage du Bar, the Rouge-mont of his time, who kept the Great Condé, the Prince de Conti, and M. de Longueville, was every day deceived; that his servants were made use of, and even himself, to pass the correspondence of the prisoners in bottles with false bottoms, in hollow crown pieces, and in a hundred different ways. You will see what could be effected by the address of Montreuil, the simple secretary of the Prince de Conti. "We wrote to them," says the Cardinal de Retz; "they answered us; and "the intercourse between Paris and Lyons was "never better ordered. Bar, their keeper, was a "man of little understanding. Besides, *the cunningest amongst them are deceived by us.*" And in another place, speaking of his own confinement, during which he was always kept *in sight*, "My "friends wrote to me regularly twice a week. "Notwithstanding the change of three exempts "and of twenty-four gardes de corps, who succeeded each other in the space of fifteen months, "my intercourse was never interrupted."—I am aware that you diminish the means of corruption by depriving the prisoners of all communication between them and their guards, and that at present the turnkey must be gained, or all correspondence be renounced without the prison. But still there is only this man to gain; and wherever despotism reigns, gold will be esteemed above every thing, as the *præmium mobile*, and the most independent of all enjoyments; and wherever gold is thus held in estimation, there will be found corrupters and corrupted.—Moderate then your fruitless anxieties. The secret being at the disposal of the turnkeys, what signifies it whether they go for the prisoners

soners food to the kitchen of M. de Rougemont, or to that of a victualler ? The establishment of a contract therefore for their victuals makes no change whatever in the measures taken to preserve the secret, and it obviates almost every abuse.

Do you dare to confess, after the foregoing remarks, that you grant the Commandants of State Prisons the privilege of feeding the inhabitants, in order to interest their vigilance, by rendering their places more lucrative ; and that this fatal SECRET, which costs the King so dear, and the prisoners still more dearly, may be inviolably kept ? Beware how you make so dreadful an avowal ; for it renders you the accomplice of all the iniquities I have laid open.—But what ! must your substitutes have so much money to do their duty ? Alas ! their underlings exposed to such difficulties, fatigues, and anxieties, receive six hundred livres as a compensation for so bad a way of life, and keep this same secret for so moderate a sum ! They would be plunged into the bottom of the ditch were they convicted of betraying it ! They have all the trouble ; they run the greatest risks ; they ought, considering their very moderate income, to be less scrupulous, and more interested, and six hundred livres is the price of their discretion, while that of their Chief is estimated at forty thousand !—Surely the tarif is unequal !—Do you think then that the ten thousand livres salary of this command, which requires only residence, would induce nobody to accept it ? Every man a little straightened, who likes money better than the exercise of compassion and sensibility, will be tempted by it ; and those vacant places for supposed prisoners, which do not amount to less than two hundred and seventy-four Louis, may be left to the Commandant, if you wish to enrich him. Believe me, few men
will

will despise eighteen thousand livres a year. You may even pick and choose amongst the most illustrious *Chevaliers d'Industrie*, the people of quality in pay, should they even sell the place the next day; and the patrons and patronesses of the court will still find more than one candidate, who will pay them well for their interest to obtain an employment reduced even to such a revenue.

But if by an obstinate and puerile attachment to received prejudices, or from reasons of which I am ignorant, and which I do not wish to divine, the government will persevere in the established order, or rather disorder, let there be at least a Fort-Major appointed, who may bear witness between the Commandant and the prisoner, and form a counterpoise to the despotism of a sole and absolute master. This practice, conformable to order, prescribed by reason, alike just, necessary, and indispensable, actually exists at the Bastille, and in all the other prisons. We have seen by what manœuvres M. de Rougemont has shaken off the yoke. But observe, that if the Major you should appoint be not independent enough to speak the truth, honest enough to be incorruptible, in sufficient estimation with you to dare to express his sentiments, it will only be a fresh inconvenience, which, instead of remedying, will aggravate all the rest; for his silence will be interpreted in favour of the Commandant. Perhaps even a fatal and treacherous collusion may fill the measure of the prisoner's misfortunes, who will then have two parties, two accusers, two tyrants instead of one, and who will then be obliged to support, by means of some new æconomical reform, what it will cost the Commandant to gain his colleague.

Must we reckon then upon an inflexible disinterestedness, as if daily experience did not teach

us how rare a quality that is? Vigilance may be purchased, perhaps even fidelity, to a certain point; courage too may be purchased, and the lives of men; but never were the virtues to be sold. Why then make the good order of an administration depend on the virtues of the administrator, when by infallible precautions we can prevent the effects of his corruption? The same Commandant will be honest, when he has no pecuniary interest to oppose to the welfare of his prisoners; who on the contrary will not fail to oppress them when his persecutions become lucrative. We see few monsters who do evil for the sake of doing it. (Scarcely are there any savage beasts who kill for the pleasure of destruction.) But there are still fewer men, perhaps, capable of shutting their ears to the voice of avarice, when they can obey its call and listen to its suggestions with impunity. *There are, says Seneca (g), some professions hurtful to honest, but wavering minds.* Alas! how few are otherwise! How few men live up to their principles, and thus escape from temptations!—It may be said in general of us all, *there is less to fear from hatred than covetousness.* I do not assert that the Commandants of prisons will frequently abuse the opportunities of their situation to such an excess as M. de Rougemont. No: he must have a triple-coated heart of brass to conduct himself as he does; his genuine motto is *Illi Robur, & es triplex circâ pectus* (h). God forbid I should suspect any man of such severity, of such wretched cruelties, unless I were convinced of it by my own eyes, or by irreproachable evidence. But an abuse may still be onerous, without being excessive; and I believe that

(g) Ep. 24,—14.

(h) Perhaps this may be better, *Per incertum solidior an varior.*

that the temptation is too strong for the general run of mankind. Unquestionably in all matters of administration it is chimerical to look for a platonic perfection; that is, to the dishonour of our species, become a truly romantic expectation. But it is for this very reason that a less extensive career should be given to the arbitrary will of subalterns; and that the theory of every institution should be more rigorously weighed in the balance of equity; for it is but too certain that human passions will deviate widely from principle, in practice.—A beautiful and striking lesson! Despotism is obliged to prescribe limits to itself, to effect order in its own works! In the midst of those dungeons where it stretches out its iron sceptre, it dares not abandon every thing to the arbitrary will of one man, without consenting to become the accomplice of his crimes!

The establishment of a victualler for the supplying State Prisons has this advantage, that his obligations may be accurately defined, and a legal engagement be contracted. It is easy, it is necessary to prescribe to him the nature, the quantity, and the quality of the food he is to furnish, all of which constitute a part of the agreement with him. The title of *Commandant*, so sonorous in the mouth of M. de Rougemont, seems to exclude such details, or at least to render them more difficult of discussion; for men separate in every thing the word from the thing; and even he who does no other than the duties of a victualler and gaoler, would be highly offended if one would presume to bestow on him that name, or place him on such a footing.

A victualler may possibly interest several persons in tolerating his negligences; but one alone will at all times be sufficient to accuse, and to convict him.

him. The prisoners will neither fear his persecutions, his favour, nor his calumnies: the truth will be more roundly told, as there will be less interest in disguising or concealing it.

This principal source of the vexations practised in State Prisons being once exhausted, the next object is that of false reports, which must be prevented even to the very possibility; for why should not the government prevent the evil, rather than reserve to itself the remedy, and by that expose itself to be ignorant of it? To take away every degree of interest from calumny, is to cut up by the roots the most frequent source of calumnies. The Commandant must be possessed of the blackest malignity to be supposed capable of gratuitously endeavouring to injure his prisoners, and the heart revolts at the suspicion. As every thing however is possible, as the humour of a prisoner may make him sour, and his gaoler be irritated in consequence; as prejudices, false opinions, resentment, and vengeance, may be the result, it is just and necessary that the prisoner should have the means of appealing. It is enough; alas! it is too much for him to be deprived of the privilege of being confronted with the person whose accusation has plunged him into this Dungeon, without leaving him destitute of every means of defence. It were the height of cruelty to allow new griefs to be falsely and with impunity accumulated on his head, and new barriers to be raised, without his knowledge, between him and his liberty. He ought at least to reckon himself secure against traducers, and that the regularity of his present conduct, which cannot be impeached, may be permitted to belie the assertions of his enemies, or expiate his past errors. The Commandant who is his keeper, is a man like himself; he may become his adversary; he ought only

only to be his witness; a third person should judge between them; it is necessary, therefore, that the prisoner should have the free power of complaint. It is still disadvantageous enough for him, that his situation renders him suspected; that he can only write, whilst his adversary speaks. Let his letters at least come safely to hand; and let there be no means of with-holding, of altering, or retarding them. What right has a Commandant to see what a prisoner writes to the Lieutenant of the Police, or the Minister? What can be the motive of his curiosity? The apprehension, doubtless, of the complaint being against him. Why that apprehension if his conscience be clear? *He who walketh with simplicity, walketh confidently.* The Commandant cannot be afraid of being judged without being heard; the charges will reach him, his justification will be clear, easy, and favourably listened to; for every presumption will be in his favour. In this, as in all the rest, it may be truly said,—*Every one that doeth evil hateth the light, lest his deeds should be made manifest* (i).

The Commandant of a State Prison has not the right to know the affairs of the prisoners. It is a mark of condescension, when they choose to communicate them to him: and for this confidence they meet with a singular recompense! Their complaints are limited and retarded as much as possible. Pernicious abuse! Odious iniquity!—Does not a person who has a law-suit write as often as he pleases to his judge, to his reporter? Well! the judge of a State Prisoner is the Minister; his reporter, the Lieutenant of Police. Such a judicature arises from the law of the strongest. Every opportunity

(i) John, chap. iii. v. 20.

opportunity to invoke their justice, their clemency, or their pity, ought to be open to him. It is necessary therefore that the turnkeys should have the permission, nay the express order, to supply him on demand with paper to write to the Minister, or to the King's Commissioner for the department of State Prisons, and to seal immediately those letters the contents of which should be held sacred. They should not even pass through the hands of the Commandant, but be put into a box (k) appropriated to that purpose, to be emptied every day by a person appointed to the office, and carried by him to the Police.

It is equally unjust and absurd also for a turnkey to be under the necessity of asking M. de Rougemont, in the name of the prisoner, for the paper to write to *M. de Rougemont*, who does not feel that besides the loss of time, this puts the prisoner at the mercy of his guard. The Commandant seldom mounts to the Dungeon, and the wretch who groans there does not see him three times a year. If any body asks for him, he answers, *What! one would imagine that a Commandant is obliged to submit to the caprices of his prisoners. I shall go when I think proper.*—He forgets that it is his trade to provide for the wants, and attend to the complaints and the just demands of those prisoners whom he treats so disdainfully: he forgets that if they are not his livelihood, they form at least the principal part of his fortune. Did he but reflect that when one accepts an employment, it is not enough to collect the emoluments of it, he would be convinced that the prisoners have claims upon him, in spite of his dignity of Commandant. A very honourable dignity truly, that of a *Gaoler by brevet!*

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(k) This is, as I am told, the practice at the Bastille.

—THE LIONS, said Diogenes, ARE LESS THE SLAVES OF THOSE WHO FEED THEM, THAN THE LATTER ARE THE SERVANTS OF THE LIONS. But what is the result of this ostentation of the Commandant? That if a prisoner has any complaints to make, it depends upon a turnkey to tell his Chief, or not, that a prisoner is desirous of writing to him. Thus the subaltern, like the master gaoler, may, when he pleases, reduce his flock to silence. I do not say that this does, but that it may happen.

CHAP. V.

CONCLUSION.

ENOUGH has been said, unquestionably, to convince every man who reads without prejudice, of the necessity of remedying the abuses which prevail in this house. It encloses torments without number; it resounds with the sighs of despair, and black melancholy is its perpetual inhabitant. But why not banish from it those sorrows which are not inseparable even from that situation? Why permit so many barbarous contradictions, so many cruel privations, in matters equally indifferent to the security of the prison, and the motive of the imprisonment?—Since the illusions of self-love, the prejudices of education, the tyranny of custom, the too-captivating temptations of arbitrary power, *the excessive ignorance of Princes*, the passions of their Ministers, leave no room to hope that *the law* will become the expression of the common consent, and the sovereign of Kings, instead of Kings being the tyrants of the law, by which, nevertheless, and by which alone, they are Kings; since it is next to impossible that Sovereigns should consent to limit those prerogatives which their agents have so much interest, or rather which they alone have any interest in supporting; it is certainly necessary

cessary that the authority of their greedy subalterns, at least, should be looked after and restrained.

They who think otherwise, and who are of opinion that a *Lettre de Cachet*, like Pandora's box, ought to contain every evil, so that in opening it they may all alight on the object of the proscription, would not change it were I for ever to multiply reasonings and facts; for there is no method of convincing the man who denies a self-evident proposition.

I am far from accusing or suspecting the government of an useless and barbarous collusion. I have some hopes, therefore, that this strong, but accurate exposition, of the malversations exercised in the Dungeon of Vincennes, will produce a salutary effect. I call honour to witness that I have not hazarded a single fact; that every thing contained in my narrative is strictly conformable to truth; that no detail is either exaggerated, or misrepresented by me; that I have reckoned my own personal sufferings as nothing, which were perhaps more tolerable than those of any other, whether from the moderation with which I bore them, or from my constant attention not to give the slightest pretext for complaint; whether from a sort of fear with which my veracity inspired M. de Rougemont, or from his thinking he perceived how much his immediate superior was pleased to interest himself in my behalf. This work will not appear until the epocha of my liberty, or after my death. All personal interest will then have disappeared; but I shall think it a duty I owe the unfortunate I may leave in these abodes of sorrow, not one of whom I am acquainted with, to recount what passes in them. If I begin writing it here, it is because I am apprehensive of losing my sight; and, likewise, that no detail may escape me. I shall not address it to

the Minister, who reads nothing. My intention is to publish *, or leave the care of it to that tender and generous mind, which partakes of my sensibility and resolution ; and which feels my sorrows more than all those I have occasioned her's. Private memorials buried in public offices are easily lost, and still more easily forgotten ; whereas the public opinion, sooner or later, cannot fail of having great influence. It is that, therefore, which I shall strive to fix. If I looked for vengeance, this is certainly not the method I should pursue ; but I am incapable of so unworthy a desire, which levels the offender (a), and never sprung up in a mind truly noble. But who can think himself offended by a man whom he despises as the most abject being ? It cannot be imagined that I derive any vanity from so inconsiderable an undertaking. Its execution is very much beneath my subject and my views. Perhaps too in the days of my prosperity my imagination was more ardent and productive, and my stile easier and more energetic ; it is cruel to survive one's self at *eight and twenty years of age* ; but if misfortune elevates strong minds, it repels genius. For seven years past have I been persecuted, ruffled by all sorts of misfortunes, a victim to anxiety and chagrin ; free from remorse, but overwhelmed

* It is necessary to inform the English reader, that this work was published soon after the Count de Mirabeau left prison, and under the title of a *Posthumous Work*.

(a) ——— *Chi sarai capace
D'un sì basso desio, che rende eguale
L' offeso all' offensor.*

(Clemenza di Tito, scen. vii. att. iii.)

Juvenal has said, ——— *Minuti
Semper & infirmi est animi, exiguique voluptas
Ultio.*

(Sat. 13.)

And Addison has improved upon this thought. ———
A coward may fight, says he, a coward may conquer ; but a coward can never pardon.

whelmed with sorrows for what is past. I have been ill these ten months, and entombed fifteen in the most rigid solitude. The vigour of the understanding may be altered by such severe proofs. No matter : zeal imposes silence on self-love, and my sole object is UTILITY.

It is a strong symptom of servitude and corruption, when people have no longer the courage, or even the idea of applauding those who dare to discuss their rights, and to defend them ; and when the spirit of slavery has so deeply taken root as that they really regard those who resist it, and display other principles, as MADMEN. This sort of *folly* will not be very common under such circumstances ; for what encouragement remains to those who possess upright intentions and patriotic sentiments, when so far from being sure of the public approbation, they are as likely to be condemned by their fellow citizens as to be persecuted by the government ? There remains none for them, if their greatness of mind does not furnish them an ample recompence in the satisfaction and content of their own conscience ; *that hidden comforter, which cries louder than the multitude and fame, and which, without counting suffrages, alone predominates over all opinions* (b). There remains none, if they know not how to say with two great men of antiquity,—*Try your menaces of death and exile on those you are able to terrify ; on the slave of fortune who makes his hopes, his measures, his thoughts, depend on her ; but as for me, I shall receive every thing the ingratitude of my country prepares for me, without resistance, nay even without reluctance.*—THE TYRANT WILL MAKE

Cc 2

THEM

(b) Senec. de benef. l. iv. 21.

THEM LEAD ME, WHITHER ?—WHITHER I GO (c).

I shall not examine, if in *our* political maladies such symptoms may be met with as I have been describing ; but I say :

If men in a superior station have no desire to know the truth, or are afraid of it, this publication will be of little use, because I plead against them at their own tribunal, and they are certainly better acquainted with their real intentions than myself. What objections can they have, however, to answer a man totally disinterested, since he will no longer be under the dominion of him whose tyranny is the subject of discussion, when he shall unveil his base barbarities ? Not to restrain them when known, is to authorize them. However this may be, I shall have the hope at least of opening the eyes of some parents and relations who are prejudiced, rather than inhuman. If I should touch their feelings for the fate of those unhappy persons, whose misfortunes I so long have shared, the memory of my sufferings will be less bitter. Should I contribute to restore his liberty to only one of them, I should look with a serene aspect on the risks I probably may run in propagating these hardy truths. But what merit is there in doing good without danger ? I do not publish my name, because that frankness is unnecessary, as it would be imprudent ; but the man whom I deliver over to the indignation of his fellow-citizens will infallibly recognize me. I have lavished in every page what may reveal me to his eyes. He has then a very simple and honourable method

(c) *Cui spes omnis & ratio & cogitatio pendet ex fortuna.—Cum tu hominem terreto si quem eris nactus, istis mortis aut exilii minis. Mihi vero quidquid acciderit in tam ingrata civitate ne recusanti quidem evenerit : non modo non repugnanti.* (Cic. p.)

method of exculpating and avenging himself, by LEGALLY repelling my accusations, which he no doubt will stile calumnies. Then will I appear in open day, ready to submit my conduct, my principles, my work, and the proofs of my assertions, to the Magistrates appointed to distribute justice, to repress calumny, to punish the calumniator, and to brand libels.

After this solemn defiance, I think myself justified from the imputation of making an anonymous attack, and I have no more to say to M. de Rougemont. If he be silent, he pleads guilty: if he defends himself only to the Ministers, he will brave the opinion of the public, the sole judge of honour and proceedings; he will add to his faults, and to his ignominy. If he obtains from the complaisance of some man in place an apology, with which he will not fail to load the Gazettes and the Journals, he will still more strongly prove that he is obliged to shield himself from the truth. When one descends into the arena, it is to combat there with equal arms: I attack him in the face of the nation: let him defend himself before it; we all respect authority; but that very respect teaches us that Ministers are too often deceived, and that Truth is the daughter of Time, and not of Favour.

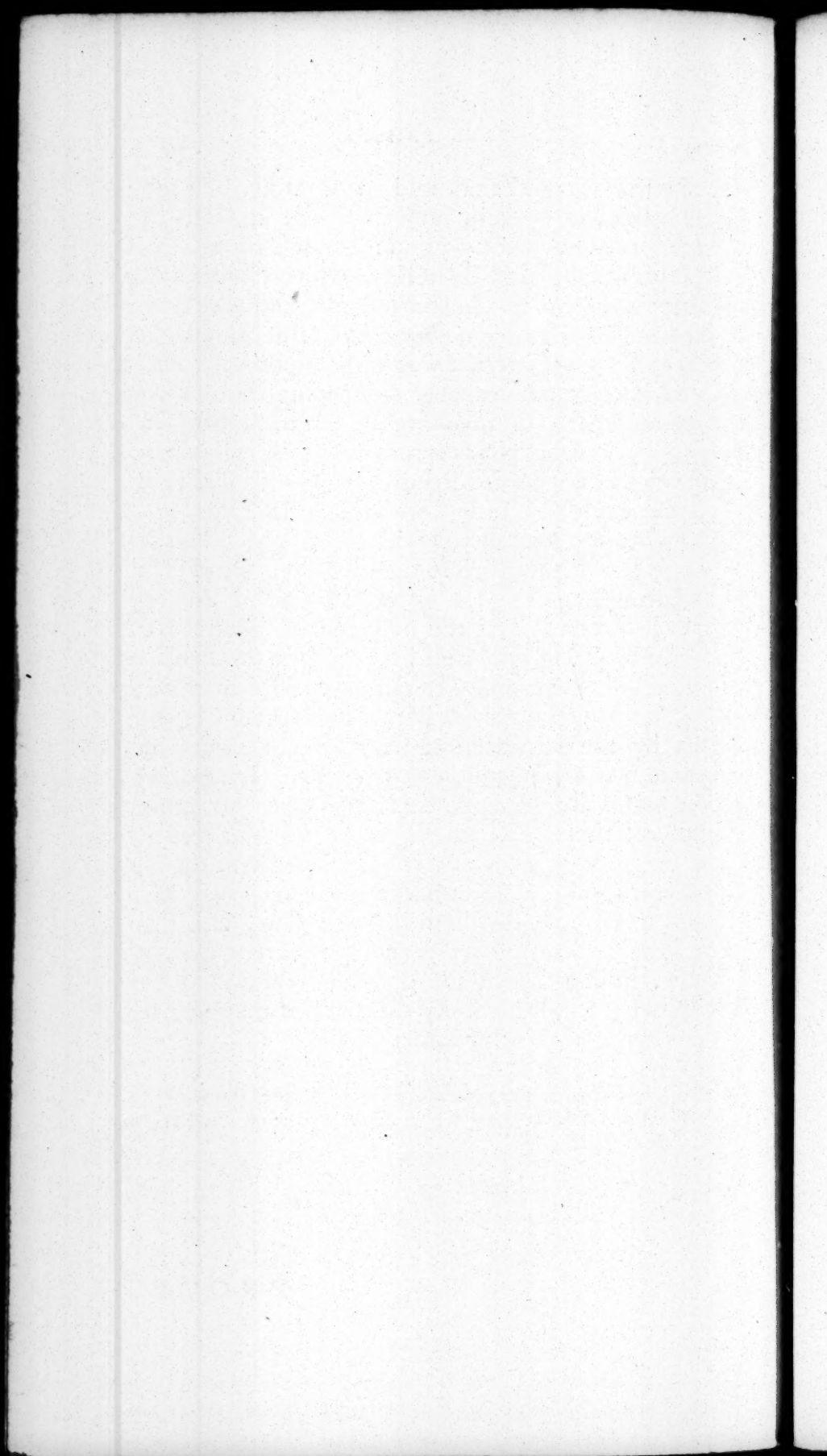
But let us leave this man, on whose front I do not flatter myself with having excited a single blush. No! I know him too well, to suppose that shame has ever wounded his conscience, which has been long callous. Perhaps his brethren, however, on viewing this hideous picture, may be afraid of assimilating themselves with him: possibly they may loudly condemn those indignities of which he gives them the example, and that is a tacit engagement not to become guilty of the same. Perhaps on a
private

private self-examination they will do justice to themselves, by discovering some seeds of the iniquities I have been unveiling, in their own conduct, and respect for mankind may be successfully opposed to the extremes of avarice.—The gaoler who presented the hemlock to the greatest of the Greeks, turned aside his head and wept. Was it the magnanimity of the philosopher, or the spectacle of suffering and patient innocence that drew tears from this satellite of tyranny? No; such exalted virtues were not within his reach, and the order of their masters is in the eyes of such mercenaries the characteristic of crime or innocence. It was the pity natural to human beings at the sight of an unhappy fellow-creature which actuated him.—*See, says Socrates, the good heart of that man. Since I have been in prison, he has come often to see me, he is worth all the rest.*—O ye! who accept without shuddering a similar employment, obey your principals; but mix not your cruelties with theirs; do not always suppress nature: cringe, since you are slaves; be merciful, since you are men.

And you, O my son! whom I have not embraced since the time of your cradle, you whose agonizing lips I bathed with tears on the very day I was deprived of freedom, and with an afflicted heart which announced to me that I should behold you no more; I have few claims upon your tenderness, since I have accomplished nothing either for your education, or your happiness. They have torn from me those sweet enjoyments: you do not know, therefore, whether I should have been a good father. No matter; you owe it to yourself, you owe it to your children, to respect my memory. When you shall read this, I shall probably be no more; but you will find in this work what was estimable about me: my love for truth and justice:
my

my hatred of adulation and of tyranny. O my child! beware of your father's faults, and let his errors serve as a lesson to you: beware of the excesses of that ardent sensibility, which constituted his happiness, but also his misfortune, and which he has perhaps implanted in your blood. But imitate his courage: vow an eternal war with despotism. Ah! if you can ever be capable of keeping terms with it, of flattering, of invoking it, or of serving it, may death abridge your early age!—Yes, it is with a firm voice I offer up this dreadful wish.—My son! love your duties; love your fellow-citizens! love your fellow-creatures: love, if you wish to be loved. This is the only sentiment which renders man capable of true and lasting happiness: it is the antidote of the destructive passions, and the only remedy against the chagrin of seeing one's self perish under the strokes of time.—Is it necessary to make the love of those, to whom we have given life, a precept? Elevate them by the attraction of sentiment, if you wish their soul to be in unison with your's. Learn, my son, and never forget, that you have no other claim on them, but in proportion to your duties, and the manner in which you shall perform them; that you would be an unnatural monster, were you more severe towards them than the laws, and that the laws in every case prohibit arbitrary orders. Know, in short, that for them to constitute your happiness, you must study their's, and may you be more happy than your father (d).

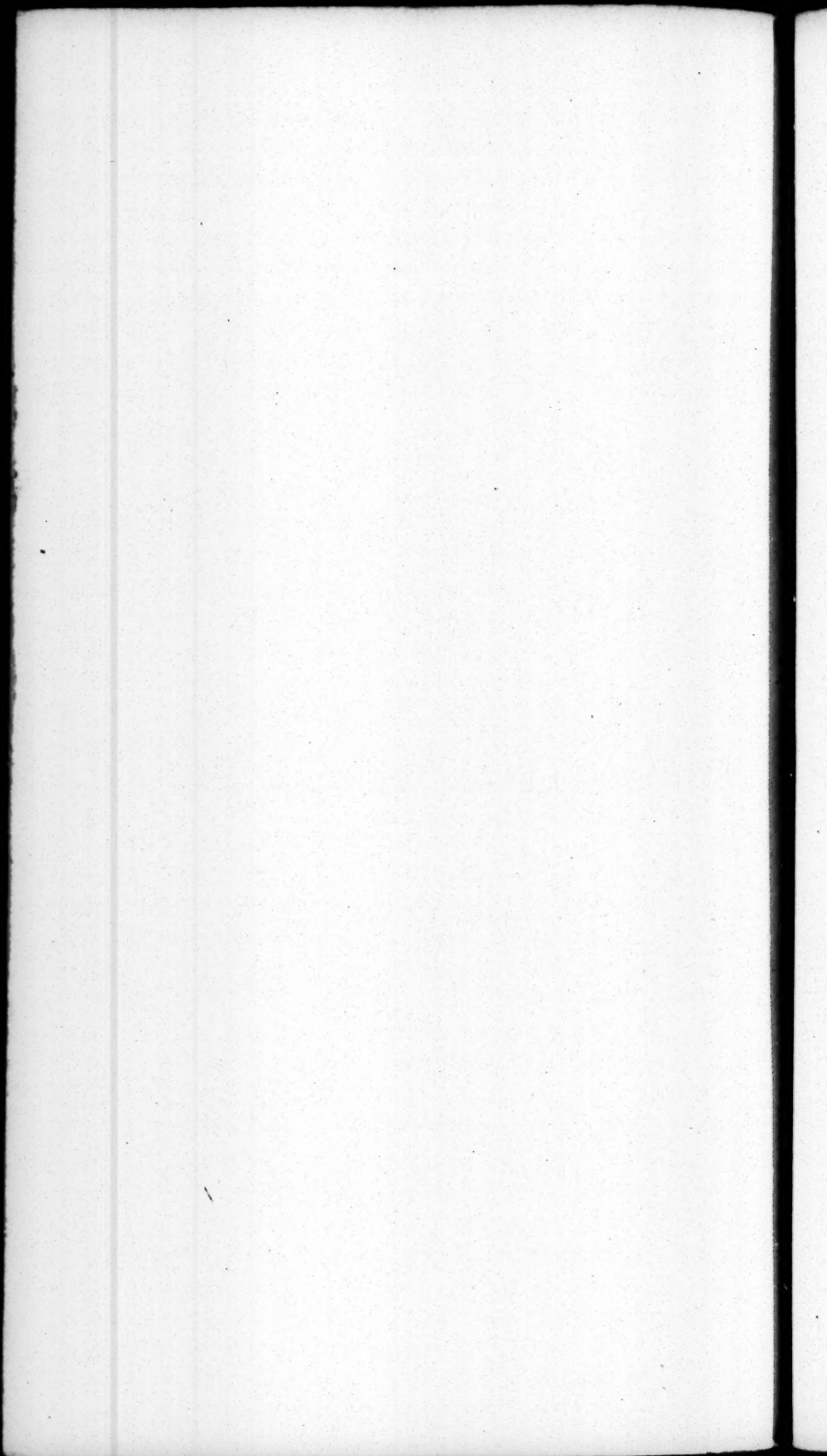
(d) He was no longer my child, when I destined this work for him! And I did not know it! And the first news I had of my son, was of his death!



P R O O F S
A N D
E X P L A N A T I O N S.

*Da mihi Mæoniden, et tot circumspice casus,
Ingenium tantis excidet omne malis.*

(OVID.)



ADVERTISEMENT.

I THOUGHT proper to throw the discussions of public right into notes at the end of my work, to avoid prolixity. My researches are not near so compleat as they might be. I am without books, and they have only restored me the smallest part of my papers which contained the materials of a work, of which this ought to form, so to speak, only a chapter. As I find, however, in my manuscripts, mutilated as they are, pretty numerous extracts from the monuments of our history, I shall give some proofs here, selected from a great many others, which establish, that the system of arbitrary orders is absolutely incompatible with our laws, and which will demonstrate the truth of the assertions, that may appear to have been hazarded in the preceding work, to those who have not made a profound study of our history.

As for the rest, I loudly protest, respecting the criticisms that may be made on these notes, that I do not look upon them as necessary to maintain my principles. I am aware that in this sort of discussion, one quotation may be opposed to another; that every old title may be gainsayed, at least in its interpretations; that ancient usages are almost always so confusedly defined, that it is impossible to found an irrefutable system on them; but polemical details ought only to hold the second rank in politics—philosophical writings, (if I may be allowed the expression) and the principles of natural law, stand the foremost. A nation will never have the less right to a stable and regular liberty, let her public right be ever so defective, or mutilated, or were it even annihilated; for natural law is the only law
which

A D V E R T I S E M E N T.

which it is not in the power of man to abrogate. In general, the arguments of reason are infinitely superior to all other authority, and render historical dissertations, which are subject to endless disputes, useless enough in matters of philosophy or politics. It must be allowed, that it would be very melancholy for liberty and the privileges of a nation to depend on grammatical discussions: Now it is precisely to this, that almost all questions of public right are reducible in the last analysis. Perhaps those readers, however, who chuse to examine the notes, may find in some of them, something more than a dry compilation.

PROOFS

P R O O F S

A N D

E X P L A N A T I O N S.

(I.)

Lettres de Cachet are forbidden by the most ancient laws, and the ordinances of all our Kings.

“ **H**E (Louis XIV.) was ignorant that a great
“ number of the ordinances of his prede-
“ cessors forbid all judges to pay any regard to
“ *Lettres Clofes*, or *Lettres de Cachet*, which should
“ be granted in the way of justice.”——(Vol. I.
p. 2.)

This

This point of fact is incontestably proved by a multitude of ordinances. I have already observed (Note (a) of the Introduction) that the denomination of Lettres de Cachet was but modern. M. de Montblin says, that this word was employed for the first time in the ordinance of Orleans of 1560.

Formerly there was no other distinction than *Lettres Patentes*, *Lettres Clofes*, or *Fermées*, *Lettres de Justice*, and *Lettres de Grace*. All letters without the great seal were *close* or *shut*, and had a private seal, called *Scel du Secret*, or the Privy Seal, which was kept by a Chamberlain of the King. (Montblin, *Maximes du droit public François*, tome I. part II. chap. 3. (a) and the *Encyclopedie* at the word *Lettres de Cachet*.) It was under this privy seal that letters patent under the great seal were sent to the different courts of the kingdom.

Previous to the establishment of parliaments, considered as judicial bodies, and from the earliest period of our monarchy, several laws have annulled all acts, and all judgments founded on particular orders. We have seen in the body of the work, chap. I. that the contrary opinion of M. de Montesquieu was wholly unfounded. The *preceptions*, subject from their nature to the verification of the judges, were nearly what we at this day call *Lettres de la Chancellerie*. To this the ancient records of our history bear testimony.

The

(a) A great part of the texts of the ordinances, contained in the note, have been collected by M. de Montblin (*Maximes du Droit public François*.) I have frequently done nothing but abridge, and arrange them differently. This extract appeared to me necessary to compleat this work, because it strikes me, that in treating a subject, one should refer the reader as little as possible to other writers, since an author should collect all the matter the most important to his subject, in his book, without which it would not be worth while to take up the pen.

The objection drawn from the Abbé Dubos is absolutely untenable, and is founded only on unfaithful quotations. According to the Bavarian law, on which he rests, he who has killed a man by order of the King, or of the Duke who commands in the province, is not sought after; but the question is respecting some one who has contrived the death of the Duke, and whose goods are for that offence in the power of the Duke, “provided the crime of the culprit be proved by three witnesses, so that the accused cannot deny it. If there be only one witness, and the accused denies it, recourse must be had to the judgment of God in presence of all the people, that no one may perish from envy.” *Si quis contra ducem suum quem rex ordinavit in provinciâ illâ, aut populus sibi eligerit ducem de morte ejus consiliatus fuerit, & exinde probatus negare non potest, in ducis sit potestate homo ille & vita illius, & res ejus infiscuntur in publico. Et hoc non sit per occasionem factum; sed probata res expediat veritatem, nec sub uno teste, sed sub tribus testibus personis cœqualibus sit probatum. Si autem unus fuerit testis, & ille alter negaverit, tunc Dei accipiant judicium: exeant in campo, et cui Deus dederit victoriam, illi credatur: & hoc in præsentî populo fiat, ut per invidiam nullius pereat.* (Lindenbrok, Codex legum Antiquarum, p. 406.)

It is evident that this law is very far from an arbitrary order issued without any previous procedure, without the conviction of the culprit; a preliminary expressly required by all the texts of the capitularies. The reader may consult Baluse. (Tome I. col. 718, 912; tome I. col. 4, 6, 79, 101, 236, 269, 322, 359.) We have already observed in the text, that the free genius of the Franks was so very opposite to the pretended conjecture of the Abbé Dubos, that this circumstance alone would render
it

it absurd. Their most authentic, and most august code, in fact, the Salic written law, expressly says, “ That the Franks shall be judges one of the other
“ with the Prince ; and that they shall decree the
“ laws together in future, according to the occasions which shall present themselves, whether it
“ be thought necessary to preserve entire, or to
“ reform the ancient customs brought from Germany
“ many (b.)”

The code of the Germans made by Clotarius, bears for its title, in the ancient editions, that it has been resolved by Clotarius, by his Princes or Judges, that is to say, by thirty-four Bishops, thirty-four Dukes, seventy-two Counts, and *even by all the people.*

The Bavarian Code, prepared by King Thierry, reviewed by Childebert, Clotarius, and King Dagobert, professes, that it is the work of the King, of his Princes, and of all the Christian people who compose the kingdom of the Merovingians.

La loi Gombette, or Burgundian Code, contains the signatures of thirty Counts, who promise to observe it, they and their posterity.

The collection of Capitularies bears for title, *Capitula Regum & Episcoporum, Maximeque Nobilium Francorum omnium* ; and they are called by the Kings, their work, and that of their trusty-ones. (Féaux.)

Charlemagne, in speaking of the Capitularies, framed to be inserted in the Salic Code, says, that he has made them with the consent of all. That of 816 declares, that Louis le Debonaire assembled his great ecclesiastics, and the laity, to make a Capitulary for the general good of the church. In another, he defers the decision until his trusty-ones shall

(b) See Vol. I. Note (1).

shall be more numerous. Charles the Bald says, *Such are the Capitularies of our father, which the French have thought proper to recognize as law, and which our trusty ones have resolved in a general assembly to observe at all times.*

Who will be persuaded that a people, who thus made laws with their Sovereign, abandoned their lives to his arbitrary disposal?

As to the acts of violence which arose from the manners of the times, examples of them are without number, and the Abbé Dubos might have made more apt quotations. Why did he not allege that it was by virtue of a fundamental law, that Childebert II. wishing to get rid of Magnovalde, murdered him, ordered him to be thrown out of the windows of his palace, and seized upon his fortune? It is true that this Nobleman was seduced to Court under the pretext of a banquet, and that perfidy seems to exclude the right. But you will see that it was necessary to surprize him, because he was too powerful. Unquestionably, there will never spring up any powerful aristocracy in a country where the Sovereign can condemn the greatest man in the state to death, without being obliged to bring him to trial!

Under the first Frank Kings, says M. de Montesquieu, (l. xii. c. 2.) Clotarius made a law that no man should be condemned without being heard; which proves a contrary practice in some particular cases. It appears to me that this is pushing the conjecture too far. One illegal act of violence was sufficient to occasion so natural a law; and it is very certain that the sanguinary spirit of the Franks must have multiplied them very much. But that cannot be called a *practice*; for that supposes a custom, at least, which has the force of law; and that is what no person has ever been able to assert,

in our constitution, of the condemnation of an accused person, without being heard. The texts I have been quoting, prior to the law of Clotarius, since it is of 560, prove this invincibly.

Respecting the two facts adduced by the Abbé Dubos in support of his strange system, which are taken from Gregory de Tours, the reader will find the most ample and most satisfactory explication of them in the *Maximes du Droit Public François*, (Tome I. part I. chap. 33.)

We find in our history, at the beginning of the seventh century, an order given by Thierry, or by Brunehaut, against St. Colomban, to make him quit his monastery of Luxeuil, and to exile him to another place, *quoad usque regalis sententia quod voluisset decerneret*. The Saint would not obey, was carried off by force, and returned to his monastery as soon as his guards were withdrawn.

The author of the article *Lettres de Cachet* in the *Encyclopedie*, (M. Boucher d'Argis) has not failed to quote this order as the first example of Lettres de Cachet. It is a real mockery thus to abuse words; and M. Boucher d'Argis had before him more generous examples in some of his colleagues in this great undertaking. As for the rest, the fact proves nothing, unless it be the illegality of the order in question, since it was so boldly disobeyed.

But once more; our ancient laws, even those we call barbarous, have formally condemned this abuse of authority. The text of the law of the Visigoths, mentioned in the first volume of this work, page 18, (note u) is more formal and more energetic, than the quotation abridged in that place, for the sake of brevity, would seem. It expressly declares the nullity of all arbitrary orders, and for the following reason: *Non nunquam gravado potestatis depravare solet justiciam sanctionis; quæ dum*

dum sæpe valet, CERTUM EST QUOD SÆPE NOCET. (Codex legum Antiq. p. 25.) It only exempts the judges who shall have executed them from all damages, and interest; *Si se juramento firmaverint non suâ pravitate, sed regio vigore nequiter judicasse.* (Ibid.)

The constitution of Clotarius of 560 is decisive on this subject. It rejects as null and useless all orders contrary to the laws, which may be surreptitiously obtained from the Kings. It declares, that orders which are consonant with law and justice, cannot be destroyed by arbitrary orders, and that the latter should be deemed null and void. *Quidquid legibus decernitur omnibus contra impetrandi aliquid licentiâ derogatur, quæ si quolibet ordine impetrata fuerit vel obtenta, a judicibus repudiata, inanis habeatur & vacua.* (Capitul. Baluse, tome I. col. 7, art. 2.) It prohibits the condemnation of an accused person before he has been heard and convicted by a judicial procedure. *Si quis in aliquo crimine fuerit accusatus non condemnatur penitus inauditus. Sed si in crimine accusatur & habitâ discussione fuerit fortasse convictus, pro modo criminis sententiam accipiat ultionis.* (Art. 3. ibid.)

The same dispositions are repeated in several Capitularies, amongst others under Clotarius II. whose reign affords a sort of revolution in the history of the first race, because the nation, awakened by the tyrannical regencies of Brunehaut and Fredegunde, employed itself seriously in limiting the royal prerogative.

There are frequent instances of violence in those times of barbarism; but the Kings always disavowed them. Thus Pepin assures the people, that if they have any complaint to make of proceedings against the laws, it has neither been his intention nor done by his order. *Explicare debent ipsi missi*

qualiter domino regi dictum est quod multi se complangunt legem non habere conservatam, & quia omnino voluntas regis est unus quisque homo suam legem pleniter habeat conservatam; & si alicui contra legem factum est, non est voluntas sua nec jussio. (Baluse, Cap. tome I. col. 542.) Many similar examples might be quoted.

In 856, Charles the Bald declared in a Capitulary addressed to those Franks who had abandoned him, that if they could prove that he had done them any injustice, or that he had caused any of them to be apprehended, he was ready to repair the injury they had suffered, according to what his subjects might think proper. *Si aliquis de vobis se reclamationem et justum judicium venire non potuit. Aut ipse aliquem de vobis comprehendere voluit. Quia omnis quicumque de vobis ad rectam rationem ad illum & ante suos fideles venire voluerit, hoc ei concedit: & si justè & rationabiliter inventum fuerit quod rectam rationem contra eum aliquis de vobis habuerit, cum consilio fidelium suorum, hoc voluntariè emendabit.* (Ibid. tome II. col. 79.) Every body knows that under this second rate the royal authority was but a phantom.

Proofs of every sort multiply in proportion as France, which had never any constitution, but frequently a good system of administration, became acquainted with the jurisdiction of a regular monarchy. The ordinance of Philip le Bel of 1291, enjoins the judges *to execute the orders of the King, or to assign the reasons of their refusal to the person who has obtained them.* (Ordonnances du Louvre, tome I. p. 321.) The ordinance of 1344 contains spirited complaints on the subject of letters contrary to justice, which were continually obtained surreptitiously from the Prince, and *expressly forbids judges*
to

to obey them, (ibid. tome II. p. 217) annulling all letters to the contrary.

We have seen in the text of this work, that Philip de Valois was obliged to restrain this sort of civil inquisition, which has introduced into social life an arbitrary practice, nearly similar to that of Lettres de Cachet.

Between Philip le Bel and Philip de Valois, must be placed an ordinance of Philip le Long, dated from St. Germain-en-Laye, in June 1316. The following is the remarkable extract from it by Du Tillet, (Recueil des Ordonnances des rois de France, titre du Grand Chambellan, page 293, edit. of 1602) who, in other respects, is nothing less than a courageous champion for French privileges. "In matters of justice no regard is due to missive letters. The great seal of the King there is necessary, not without great reason; for the Chancellors of France, and the *Maitres des Requêtes*, are appointed at the King's suit to have their eye first on that justice of which the King is debtor; and the next on the officers appointed by the provinces for the administration of the said justice, even in a sovereign degree; and it is necessary, in order to acquit the King's conscience, and the officers of the said justice, as well near the King's person as in the provinces, that they should all have a disposition conformable to the said justice without contention of authority, or private passions which engender injustice, and provoke and bring down the anger of God upon the whole. The said ordinance, adds Du Tillet, was sacred, and by it Kings have shewn the fear they had, lest any injustice should be committed in their kingdom, issuing the said order to avoid surprize in that particular, which is their principal charge."

Charles

Charles V. who wished to do good, because he had suffered much evil, and who had talents, because adversity had given him them, provided against the great abuse made of the privy seal, which was more easily disposed of than the great one kept by the Chancellor, who was forbidden by ordinances to seal unjust letters. These ordinances, which stood in the way of intrigue, were eluded, and they had gone so far as to seal even letters patent with the *Secret Seal*. Charles V. then only Regent for life, ordered in 1350, that the Chancellor should not seal the letters passed in council, unless they were signed by three at least of those who had assisted at it. (*Encyclop.* at the word *Chancelier*.)

M. Boucher d'Argis assures us (*Encyclop.* at the word *Lettres Patentes*) that the most ancient example he could find in the ordinances, of the denomination of Letters Patent, and of the distinction between them and *Lettres Clofes*, is in the letters of Charles V. then Regent, dated the 10th of April, 1357, by which he forbids "paying any
" of the King's debts, notwithstanding certain
" Letters patent, or close letters, of Monsieur, of
" us, or the Lieutenants of Monsieur and of us,
" &c."

Charles V. by article XII. of the ordinance of the 14th of March, 1358, forbids all judges to obey letters patent, or open cedulae, which should be sealed only with the secret seal. The ordinance of the 27th of January, 1539, (article XXIV.) repeats this disposition, and there were even prohibitions for the orders sealed with the *Signet*, the third seal of our Kings, which they carried themselves, and which Louis le Jeune was, it is said, the first who made use of. (*Encyclopedie*, at the word *Lettres de Cachet*.)

The

The distinction between the Signet and the Privy Seal was soon abolished. (Ordon. de Louvre, tome III. p. 226, 386.) The following are the terms of an ordinance of the 13th of March of the same year, 1359: "We will, and we strictly forbid you," (it is to the Presidents of Parliament he speaks) "that as to Letters Patent or Close,—be they sealed with the green or yellow wax,—signed with our own hand or otherwise, or to any verbal orders that we may give you, to pay obedience in any manner; but set aside and annul without hesitation such letters as unjust, surreptitious, wrongful, and iniquitous; and without waiting for any other order than this: and farther, all such letters we do make void, condemn, and annul by these presents, as obtained and procured by importunity, inadvertence, and against our conscience." (Ibid. tome IV. p. 726.)

An ordinance under Charles VI. of 1413, which forbids all judges on the oaths they have taken to the King, in any manner to obey letters obtained by importunity, inadvertence, or otherwise, to divert the cognizance of certain affairs from the ordinary jurisdiction, even should these letters be sealed; this ordinance, I say, informs us, that when the Chancellor refused to seal *unjust* and *wrongful* orders, Letters of *Commandment* were obtained, which obliged him to affix the seal. Charles VI. enjoined and forbid the Chancellor and his successors, *on their oath, for no order or commandment which should be made them by persons of any authority whatsoever, to seal letters of that kind.* (Ordon. du Louvre, tome X. p. 123.) These dispositions were renewed in several ordinances which specify letters, *as well open as close.* (Ordon. du Louvre, tome IX. p. 695, tome VII. p. 290, tome VIII. p. 502, &c.)

Article

Article LXVI. of the ordinance of 1453 of Charles VII. forbids *obedience to Royal Letters*, which should not be civil and reasonable, and authorizes judges in certain cases to punish the persons who obtain them. (Fontanon, tome I. p. 610.)

The good Louis XII. in his ordinance of the 14th of December, 1499, ordains that the law shall always be followed in spite of contrary orders extorted from the Monarch by importunity, and this, under pain of the judges being themselves reputed guilty of disobedience to him, and infractors of the said ordinances.

The imperious Francis I. renewed the same prohibition by article V. of chapter I. of his ordinance of October, 1535. In fine, the Kings his successors, and particularly Louis XIII. and Louis XIV. who overturned the remains of the French constitution, such as it was, have repeated the same injunctions on different occasions. The edicts of June 1643, March 1646, September 1651, extorted, it is true, from the necessity in which the government had involved itself by its blunders, and its despotism, are formal in this respect.

The principal part of the laws I have been quoting are as explicit and precise on the subject of close letters, as on open ones, or letters patent. The ordinance of 1560, issued at the desire of the States of Orleans during the reign of Francis II. that of Blois, and that of Moulins of 1566, by Charles IX. are above all remarkable. The article CXI. of the first, forbids judges
 “ to pay any respect to *Lettres de Cachet*, or Close
 “ Letters, obtained by importunity, or rather surreptitiously, in order to sequester young women,
 “ and compel them to marry against the will
 “ and pleasure of their fathers and mothers, their
 “ tutors and guardians, a thing worthy of exemplary punishment.” This regulation, which affords

fords a very striking proof of the length intrigue is capable of venturing, was renewed by article CCLXXXI. of the ordinance of Blois. Article LXXXI. of the ordinance of 1566, forbids all judges to pay any respect to Close Letters which might have been, or should hereafter be expedited, and sent to them in the way of justice.

I do not believe there is any reasonable objection to oppose to the authority of the tradition, the uninterrupted chain of which I have been endeavouring to trace as succinctly as possible.

(II.)

Various revolutions of the judicial power in France. Judgment by Peers. How it is practised in England. Reflections on that method.

“ **H**E (Louis XIV) was ignorant that by tracing back the annals of the nation, we find that every Frenchman judged by his Peers, enjoyed the privilege of not being liable to imprisonment, under any pretext whatsoever, unless for a capital and notorious crime. (Vol. I. p. 5.

I shall trace the various revolutions the judicial power has undergone in France, and I shall bring into as narrow a compass as possible, the reflections which are continually crowding upon us at every step we take in this vast career.

To form a clear and precise idea of our first institutions, we must necessarily look for their origin in that of our German ancestors. The admirable work in which Tacitus has described their manners and customs, contains in some measure the political history of the French to a very advanced period of the second race.

It is impossible to doubt of the spirit of independence which the Germans preserved even when they became great bodies of nations. The different

ent tribes of Franks had various laws digested, whether before, or after their establishment in the country of the Gauls ; these laws are all animated by that spirit ; and without entering into particulars, it is furnishing a sufficient proof of it, to observe with M. de Montesquieu, that all those barbarous laws were personal ; that is to say, they were not attached to any particular territory. The Frank was judged by the law of the Franks, the German by the German code, &c. However different their dispositions, in this point they were all agreed.

The jurisprudence of barbarous people was necessarily very simple, and very defective, because such was the state of their society, simple and unpolished. According to Cæsar and Tacitus, the Chiefs, or principal persons of each district, distributed justice, and terminated differences. *Eliguntur in iisdem conciliis & principes qui jura per pagos vicofque reddunt.* (Mor. Germ. 12.)

It is evident that litigious controversies multiplied only with the progress of civilization. The Germans scarcely understood the nature of landed property. Wholly addicted to the chase, and war, *vita omnis ex venationibus atque in studiis rei militaris consistit.* (Cæsar.) *Quotiens bella non ineunt, multum venationibus, plus per otium transigunt.* (15, Tacit.) Despising and ignorant of the arts, knowing nothing but rustic and military songs, which made a part of their amusement, every thing contributed to remove them from sedentary occupations. They led this wandering and vagabond life, which doubtless was that of the first men, and the first ages of the world. *Nullas Germanorum populis urbes habitari satis notum est, ne pati quidem inter se junctas sedes. Colunt discreti diversi ; ut fons, ut campus, ut nemus placuit.* (Mor. Germ. 16.)

In

In such a state of society, there could be hardly any thing but their personal quarrels, injuries, and revenge, to disturb their concord. This requires some discussion.

The jurisdiction of the magistrates was very limited amongst these proud Germans, so jealous of their independence. No individual had deprived himself of the right of exercising his personal vengeance. Each of them was even obliged to resent the affronts or injuries done to his relations or his friends. Enmities became hereditary; but they were not implacable. Murder itself was expiated by giving a certain number of cattle, and every offence repaired by different compositions. *Suscipere tam inimicitias seu patris, seu propinqui, quam amicitias necesse est; nec implacabilis durant. Luitur enim etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem universa domus, utiliter in publicum, quia periculosiores sunt inimiciæ juxta libertatem.* (Mor. Germ. 21.)

Such was the punishment of all private delinquencies. But never had the magistrate the power of imprisoning a man, nor of inflicting any corporal punishment. *Ceterum, neque animadvertere, neque vincire, neque verberare quidem nisi sacerdotibus permissum, non quasi in pœnam nec ducis jussu, sed velut Deo imperante quem adesse bellantibus credunt.* (Ibid. 7.) And if the superstitious veneration of the Germans for their priests induced them to grant this privilege, it was to the authority of the God of battles, and not to man's authority, they submitted.

The Germans knew only two capital crimes. They hanged traitors, and they drowned poltroons. *Distinctio pœnarum ex delicto, proditores & transfugas arboribus suspendunt, ignavos & imbelles & corpore infames*

infames cæno ac palude injecta insuper crate mergunt. (Mor. Germ. 12.) These were the public crimes submitted to the judgment of the community, and the only crimes which produced the death of the guilty. *Licet apud concilium accusare quoque & discrimen capitis intendere.* (Ibid.)

The disturbers of the public peace were not even capitally punished. They were delivered to the populace, and led about the town with a large dog fastened to their shoulders; on which *Blackstone* observes, that the Emperors, Otho the First, and Frederick Barbarossa, revived this punishment, even for very great noblemen. (Tome V. p. 107 and 108 of the French translation of *Blackstone*.)

It is proper to remark, that the half savage jurisprudence of compositions is not a legislation peculiar to the Germans. This usage may be traced to the remotest antiquity. Some features of it are to be found in the institutions of the Jews. Homicide was punished with death by their laws; but if a man struck another, and the wounded person did not die, he who had reduced him to that state was looked upon as exempted from his death, and was obliged to indemnify him for the time he had lost from work, and to restore him the expences of his cure.—*And if men strive together, and one smite another with a stone, or with his fist, and he die not, but keepeth his bed: if he rise again, and walk abroad upon his staff, then shall he that smote him be quit: only he shall pay for the loss of his time, and shall cause him to be thoroughly healed.* (Exod. chap. xxi. v. 18, 19.)—Mr. *Hume* observes, that the Greeks adopted during the Trojan war the method of compositions, which they called α ποίσα. *Compositions for murder are mentioned in Nestor's speech to Achilles in the ninth Iliad, and they are called, &c.* (Appendix 1st, page 157, vol. I.) We know that they

they were in use in all the northern nations. The Irish, a people absolutely distinct from those of the Continent, and whose origin, probably Celtic, has escaped history and tradition, had the same custom; the price of a man's head was called his ERIC. *The Irish, who never had any connections with the German nations, adopted the same practice till very lately; and the price of a man's head was called amongst them his Eric, as we learn from Sir John Davis.* The Brehon, or Judge, compounded between the murderer and the family or friends of the deceased, and the recompence assigned to the offended was called *Eriach*. (Blackstone.) The savages of North America, who, as *Robertson* has observed, (*Proofs to the Introduction of the history of Charles V.*) bear so strong a resemblance in their manners to our ancestors the Germans, pursue their vengeance with the same ardour, independent of their chiefs, and are sometimes appeased by fixing a compensation for the murder of their kindred. In short, we have found towards the middle of this century, nearly the same practice in Corsica, where the unfortunate inhabitants in the interior parts of the island were in the year 1769 very nearly in the state of nature, *in spite of the efforts of PAOLI, who led them as rapidly as he could to slavery by civilization.* The passion of revenge was exalted amongst them to the most atrocious degree, from the infernal policy of the Genoese, who unable to subjugate this people, tried to make them destroy themselves with their own hands, encouraged their sanguinary prejudices, and fomented their hatreds. A pardon for an assassination cost half a crown, and the greatest part of the murderers were kept in pay by that abominable government.

The point of honour then of vengeance, and the jurisprudence of compositions, which prove that
avarice

avarice is the strongest passion of man, since it gets the better of all the rest, are common to all courageous people, who are unacquainted with the regular administration of justice. The progress of civilization improves the jurisprudence; but men run into another excess. Despotism teaches to sport with the lives of men under the shadow of forms, or the will of the Prince, as if men who too easily become cruel for it not to be very dangerous to multiply examples of cruelty before their eyes, could have and give the right of destroying their fellow creatures; as if any individual could have granted to any other men the right of taking from him his life; as if it were not a very atrocious inconsistency for the laws to punish suicide, and thus to arrogate to themselves the right of tearing a man's life from him, which they refuse to let him enjoy; as if, in short, THE PUNISHMENT OF DEATH WERE NOT A REAL WAR OF THE WHOLE NATION AGAINST ONE CITIZEN.—(See on this subject the treatise *Dé delitti*, §. XXVII. *della pene di morte*.)

It is so true that we ought to attribute to despotism, which sports with men as with a base coin which it does not even know how to appreciate, the useless and barbarous rigour of the criminal laws, that they always have been and now are milder amongst free people. Some of the Swiss Cantons form an exception; but they are those which have retained the penal code of their ancient tyrants; and they are obliged on that account to deviate from them in practice. And here, by the bye, is one of the fatal inconveniencies attending the custom so generally tolerated, of leaving a great latitude to the judges in the application of the criminal laws. Never, as long as that toleration, in other respects so fatal, shall subsist, will men feel generally enough all their abuses seriously to set

set about a reform; and it were better to have no laws than to bargain with them.

The severity of the laws, says Blackstone, (*Commentaries on the Laws of England*, tome V. l. IV. c. I. *French translation*) is an almost infallible symptom that the state is attacked by some secret malady, or at least it indicates a feebleness of constitution. The laws of the Kings of Rome, those of the twelve tables made by the Decemvirs, were of an extreme severity. The Portian law, which exempted all the citizens of Rome from the pain of death, rendered the other laws of no effect. Then the republic flourished; but when these laws resumed all their vigour under the Emperors, and the punishments were very severe, the empire was not long in falling.

Compositions, at first fixed amongst the Germans by the mutual consent of the parties, were afterwards determined by arbitrators. To give more weight to their decisions, judges were named, and invested with sufficient power to compel the parties to conform to the arbitration, and it was in this case, that besides the composition with the party offended, there was a particular sum appropriated to the King and to the state, *Pars multa regi vel civitati*; *pars ipsi qui vindicatur vel propinquis ejus exsolvitur*. (Mor. Germ. 12.) Thus compositions became legal, and peace was maintained by the inspection, or the mediation of the magistrates.

The Franks and other barbarous nations who left Germany to form establishments in the Roman empire, had, previous to their emigration, adopted this institution. *Eliguntur in iisdem*, &c. (Vid. *supr.*) Their most ancient histories speak of persons invested with the character of Judges. (Du Cange, voce *Judices*.)

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These different customs prevailed for a long time amongst the Franks, with the modifications which naturally arose from the changes in society by conquests or ACQUISITIONS; for these terms are synonymous in their feudal acceptation. (Blackstone, tome II. l. II. c. IV.) And their new relations with the inhabitants of the country or conquered nations. It is evident that the partition of lands alone must occasion the laws to be multiplied, and give birth to all sorts of litigious discussions.

I shall begin by tracing out a sketch of the variations of our jurisprudence, and we shall then see the successive changes that happened in the judicial order, that is to say, in the choice of judges. I shall terminate this note by a succinct but accurate detail of the mode of judgment *per pares*, or by juries in England, in civil and in criminal affairs. A few reflections on the advantages of that method of enquiry over every other, will prove the loss we have sustained, by being deprived of judgment by our Peers, instead of bringing it to perfection.

France was governed, under the first race, by the Roman law, and that of the Franks, the Visigoths, and the Burgundians, who inhabited that country. But it was so advantageous to live under the Salic Code, where the conqueror had availed himself of his advantages over the conquered, which alone overturns the captious and sophistical system of the Abbé du Bos, that they abandoned the Roman jurisprudence; for Clovis allowed the Gauls to live under their laws, obliging them only authentically to declare, whether they preferred them, or would adopt the Salic law, to which they were obliged to conform themselves for the punishment of the crimes it minutely specified, and which were all punished by legal fines for the victors and the vanquished, and more onerous for the former.

Private revenge is so fully authorized by it, that it was forbid to take the heads off the stakes without the consent of the judges, or of those who had exposed them there. (See *Encyclopedie*, at the word *Loi Salique*.)

Under Childebert (kingdom of Paris) and under Clotarius the First (kingdom of Soissons) robbers were punished with death; and under Childebert the First, King of Austrasia, their nephew, homicide and incest were alike capital. It was still permitted, however, with the consent of the relations of the deceased, to purchase an amnesty for the crime, and this amnesty is to be found in the formulas collected by Marculfe. It is highly probable, therefore, that this law was rather an experiment than an uncontroverted system of police; it was too contrary to the spirit of the times: and in fact, we see Alfred the Great, more than three centuries after, placing wilful murder in the list of voluntary crimes, without being able to carry that law into execution. It is to be observed, that according to the code of that great man, a conspiracy against the life of the King was expiated on paying a fine. *By the laws of the same Prince, a conspiracy against the life of the King might be redeemed by a fine.* (Hume, Ap. I. vol. I. p. 156.) But it was at length forbid to compound for crimes, and the judges were to take cognizance of them out of the Parliament, or assembly of the nation. The Salic Law still was followed in France in the time of Charlemagne, since that Prince reformed it, but it afterwards fell into disuse without being abrogated.

The ecclesiastics almost alone had preserved the laws of the Emperors which were very favourable to them. This privilege appeared even so essential to the priesthood, that if any person entered into holy orders, he was usually obliged to renounce the
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the law he had till then followed, (Robertson, *Proofs to the Introduction of the History of Charles V.*) and to declare, that thenceforward he submitted to the Theodosian Code, which was then combined with the canonical law, begun to be compiled in the ninth century, altho' it was not reduced to order before the twelfth, when the monk Grotian (1151) digested the *Concorda Discordantium Canonum*, to which were joined the Decretals, &c. In every country, the ecclesiastics strove to destroy the municipal, to substitute the civil law; and this was so truly the spirit of the Romish Church, that Pope Innocent IV. prohibited the clergy from reading it. (Blackstone, Prelim. Disc.)

The Visigoth Code, which did not treat the Romans and the Gauls harshly, as that of the Franks had done, subsisted conjointly with the Theodosian Code in the patrimony of the Visigoths. For the same reason the Roman jurisprudence and the Gothic law maintained themselves in the establishments of the Goths. From thence arises the distinction between the countries of France, governed by custom, and those governed by written law, a distinction expressed since 864 in the edict of Pistes.

When fiefs became hereditary, which was a very natural and necessary effect of the capricious despotism of the Monarchs, and of the improved idea of property; when the arrier-fiefs were extended, which arose from the revolutions of these turbulent ages, a great number of customs were introduced, to which the barbarian laws were no longer applicable; the laws of the fiefs were established; personal laws fell into disuse; from the end of the second race they were forgotten. Local customs sprung up, which multiplied without end in a vast kingdom filled with seignories which were become from the lapse of time, and the progress of anarchy,

chy, almost independent of the Crown, and in some measure independent one of another, and from thence arises the almost infinite diversity of our jurisprudence.

The law of the Frank-Salii did not admit the proof by combat. That of the Frank-Ripuarii admitted it. The Gombette law*, that of almost all the barbarous nations, the Frank-Ripuarii, admitted negative proofs; and the Germans, the Bavarians, the Thuringians, the Frisons, the Saxons, the Lombards, the Burgundians, imitated them in this respect. The Frank-Salii did not admit them; but they had all adopted appeals to the justice of God by the proofs of the cross, of fire, water, the coffin, &c. *Judicium Dei, Vulgaris Purgatio, &c.* They were called *ORDALIE*, or *ORDEAL*. We may see in Becmant, (*Differ. de prod. sanguinis*) Montesquieu, Robertson, Hume, and Blackstone, the particulars of these barbarous absurdities, which the clergy did not always condemn; for they long presided even at these proofs, which took place in churches; and Stiernhook (*de jure Sueonum & Gothicorum*) gives this ingenious reason for it: *Non defuit illis operæ & laboris pretium. Semper enim ab ejusmodi judicio aliquid lucri sacerdotibus obveniebat, &c.* After all, this superstition was founded on the same principles to which the priests were indebted for the prodigious estimation they were then held in, nor do I see any reason for rejecting it at a time when men were made to believe, that no one who should dare to take a false oath in presence of the Pope, could escape an instant the vengeance of the heavenly powers: but still further, they knew how to prove it. See (*History of England*

* The Burgundian Code, instituted by King Gundebald. Translator.

England by David Hume, c. II. p. 72, edition in 4to.) the anecdote of Alfred, an English Nobleman. He offered to swear to his innocence before the Pope; whose person, it was supposed, contained such superior sanctity, that no one could presume to give a false oath in his presence, and yet hope to escape the immediate vengeance of Heaven.

It is not astonishing that the northern nations, at all times addicted to divination, should have been greatly attached to these practices. Superstition and barbarism, would produce the same effects in every country, and in every age, introduced them almost universally. They were known even to the ancient Greeks. "We read," says Blackstone, (tome VI. chap. XXVII. *of the French translation*) on trial and conviction "we read in the Antigone of Sophocles, that a person suspected of a misdemeanor by Creon, offered 'to handle hot iron, and to walk over fire,' to manifest his innocence; which the scholiast adds was the mode of justification in that time." (Every body may be convinced by reading the *Theatre des Grecs* of Father Brumoy, tome III. p. 403.) Strabo (lib. XII.) speaks of the Priestesses of Diana, who marched on burning coals without burning themselves; and St. Epiphanius reports, that the Egyptian Priests rubbed their faces with certain drugs, and then plunged themselves into boiling kettles, without appearing to feel the smallest pain. In Bythynia, in Sardinia, in Corsica, in India, on the coast of Malabar, in the kingdom of Pegu, at Monomotapa, at Siam, even in America, we find customs more or less approaching this strange practice. Thus do our errors stretch from one end of the globe to the other. Thus do ignorance, fanaticism, and superstition, produce the same mischiefs, and the same follies, in the one end and in the other hemis-

hemisphere. Happy would men be, did they know no other than these judicial proofs, and that they were able for ever to frighten from the world want of faith and perjury !

As the Frank-Salians, and the Frank-Ripurians, the one of whom admitted, whilst the other rejected the proof by combat, were united from the reign of Clovis : as the jurisprudence of the judicial combat must have been highly grateful to those warlike nations, and accorded perfectly with the military spirit of those barbarous ages : as it was in like manner conformable to the most ancient ideas of the Germans, since we read in Velleius Paterculus, that when Quintus Varus was desirous of introducing the Roman laws amongst them, and their mode of trial, they looked on that proposition as an innovation, it being their custom to terminate their differences by the point of the sword, *Novitas incognitæ disciplinæ ut solita armis decerni jure terminarentur* ; since we find amongst the ancient Goths in Sweden, this practice of judicial combats : (Blackstone, l. II. c. XXII.) as the ecclesiastics, by admitting the iniquitous proof by oath, had introduced perjuries every where, the Franks generally, and pretty rapidly, adopted the proof by combat. Certainly it was much less absurd than that of the judgment of God, although it in some measure formed a part of it ; for it is certain that innocence inspires in general more confidence and coolness, the two surest pledges of victory, than criminality and remorse ; whereas, all fraud apart, fire and water respect the innocent no more than the guilty. It was much more noble certainly to look upon valour as inseparable from honour, and perhaps, generally speaking, this was far from being an unreasonable opinion.

Perhaps

Perhaps this sort of proof possessed even some advantages over the canonical mode of enquiry, because perjury had not so clear a prospect of impunity. In the one case, it was only necessary to brave a very gross superstition; in the other, a man was in very imminent danger of infamy, if not of death. It will be allowed also, that the practice of obliging the persons accused to find compurgators, who, admitting that they knew nothing of the fact, yet attested nevertheless by oath, that the person for whom they appeared spoke the truth, was by no means calculated to inspire confidence. In short, it was at the general wish of the nation in its assemblies, that Charlemagne restored the proof by combat, in spite of the clamours of the ecclesiastics. It is to be remarked too, that this great Prince strove to put an end to private wars, and that as in this, so he was in all the rest, far above the age he lived in, and did not partake of the sanguinary prejudices of his nation. It is probable, therefore, that the judicial combat appeared to him the least bad legislation that could be accommodated to the manners of his time. Three centuries after him, Henry the Second of England, who was a great Prince, did not dare to abolish this same jurisprudence, although his predecessors, and particularly Henry the First, had already attempted it. That Prince had forbid the practice of combat, the object of which was a certain sum, in civil wars; a regulation imitated by Louis le Jeune, the seventh of that name, in France. (*Ordonnances des Rois*, tome I. p. 16.) Henry the Second tried only to permit either of the parties who chose it, to demand a trial by twelve free possessors of fiefs. This wise method, which the great, the very great Alfred, had the first prescribed, by little and little, but by very slow degrees, brought the proof by combat
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into discredit in England. It was by nearly similar means that St. Louis and his successors attained the same object ; but every body knows that very late in the sixteenth century, in France and in England the magistrate was still obliged to authorize the judicial combat, which the British laws had not yet abolished. The famous battle of Jarnac with la Chastegnèraie, which is the last of that kind in France, was in 1547 ; and in 1571 a judicial combat was ordered in England under the inspection of the Judges of the Court of Common Pleas. Nobody is ignorant of the prejudices this custom, which was so long in force, and so late in being abolished has left behind it.

As for the rest, this singular custom, which I have heard regretted by enlightened men who are well acquainted with the human heart, and the nation, and against which the common run of writers have exclaimed without moderation, without impartiality, and above all, without reflecting that ancient customs must not be measured by a comparison with modern usages ; this custom, I say, was subject to wise rules, and restrained within fixed limits. All these curious particulars may be seen in the *Spirit of Laws*, (book XXVII. chap. XXIII. to XXIX.) expressed with much clearness and precision.

The immunities and privileges contained in the charters of corporations, from the institution of commonalties in the twelfth century, formed a particular kind of jurisprudence, and introduced more regular and more equitable means of maintaining personal safety and every sort of property.

It was not that the laws had not already made provision for them. According to the most ancient laws of the kingdom, posterior to the barbarous codes, no person could either be apprehended or
made

made a prisoner, for any other than a capital and notorious crime. (Ordonnances des Rois de France, tome I. p. 72, 80.) If a citizen was apprehended, under any pretext whatever, unless he was notoriously guilty, it was permitted to rescue him from the hands of the officers who had seized him. (Ibid. vol. III. p. 17.) The inhabitants of certain countries likewise had the privilege of not being liable to imprisonment, if they could find bail. Such was the case with those of Nevers, of St. Genies in Languedoc, of Ville Franche in Perigord. (See Enclopedie, at the word *Prison*.)

But the free persons whom these laws exclusively favoured, did not form, by a great deal, the bulk of the nation; and the municipal government which spread itself pretty generally, in the twelfth and thirteenth centuries, changed the order of society, and paved the way for a new system of legislation.

The first steps taken towards a practice contrary to the dispositions I have been reporting, were by furnishing creditors with the means of obtaining payment.

It was one of the objects of the principal regulations to which corporations submitted themselves at their institution. They passed in this respect, as in almost all the other parts of legislation, through all the degrees of delirium and barbarism, before they attained a regular police, which even yet is still far from being irreprehensible. We find in the Ordinances, (tome III. p. 6.) an order of the King, authorizing the townsmen of Paris to take possession, every where, and as they thought proper, of every thing belonging to their debtors, to the extent of the sum due to them. It was not until 1351 that an ordinance appeared which prohibits creditors from seizing the
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the effects and the persons of their debtors, unless by express order of a magistrate, and under his inspection. (Ordonn. tome II.) It is evident, that when men came to assimilate things so different as the liberty of an individual and his other property, and that imprisonment for private debt took place, they applied this chastisement, so wantonly inflicted at the present day for all sorts of delinquencies, for the slightest as well as the most heinous, for breaches of the police, as well as for crimes against society.

But the laws relative to personal security were long respected in the kingdom, and it cannot be said that the privileges they contained, were prerogatives usurped in the times of anarchy, when the royal authority was nearly annihilated, since it was in vigour under the firm, glorious, and fortunate reign of the great Charlemagne. The following is a very remarkable fragment of the law given at Kierfy-sur-oise, in the general assembly of the nation, held there in 856, under Charles the Bald. More than one important conclusion may certainly be drawn from it.

“ Et sciatis quia sic, *est adunatus* (senior noster)
 “ *cum omnibus suis fidelibus* in omni ordine & statu,
 “ & nos omnes sui fideles de omni ordine & statu,
 “ ut si ille juxta humanam fragilitatem, aliquid
 “ contra tale *pactum* fecerit, illum honestè & cum
 “ reverentiâ, sicut seniore decet, *ammonenus ut*
 “ *ille hoc corrigat & emendet, & uniusquisque in suo*
 “ *ordine debitam legem conservet.* Et si aliquis de no-
 “ bis in quocumque ordine contra istum pactum,
 “ in contra illum fecerit, si talis est ut ille inde
 “ eum ammonere valeat ut emendet, faciat. Et
 “ si talis est causa ut inde illum familiariter non de-
 “ beat ammonere, & *ante suos pares illum in rectam*
 “ *rationem mittat,* & ille qui debitum pactum, &
 “ legem

“ legem & debitam seniori reverentiam non vult
 “ exhibere & observare, *justum justiciæ* judicium
 “ sustineat, & si sustinere non voluerit & contumax
 “ *Et rebellis extiterit, Et converti non potuerit, a*
 “ *nostra omnium societate Et regno ab omnibus expella-*
 “ *tur.* Et si senior noster legem unicuique debi-
 “ tam & à se, & à suis antecessoribus nobis, &
 “ nostris antecessoribus perdonatam, per rectam
 “ rationem & misericordiam competentem, uni-
 “ cuique in suo ordine conservare non voluerit, &
 “ ammonitus à suis fidelibus suam intentionem non
 “ voluerit sciatis quia sic est ille nobiscum, & *nos*
 “ *cum illo adunati,* & sic sumus omnes, per illius
 “ voluntatem & consensum confirmati, episcopi
 “ atque abbates cum laicis, & laici cum viris ec-
 “ clesiasticis, *ut contra suam legem Et rectam ratio-*
 “ *nem, Et justum judicium etiam si voluerit* (quod
 “ absit) *res noster alicui non facere possit.*” (Baluz.
 tome II. p. 82.)

“ Know that our Lord the King is really united
 “ to form only one body with all his faithful sub-
 “ jects of every order and condition, and us his
 “ faithful subjects of every order and condition,
 “ that if from human frailty, any thing should
 “ happen contrary to the *compact* which unites us,
 “ we should advise him with all the deference and
 “ respect which belongs to his quality of seignor,
 “ *to correct and repair such abuse, and to preserve to*
 “ *every member of the state, the rights secured to him*
 “ *by law.* And if any of us of what rank soever,
 “ acts towards the King to the prejudice of this
 “ compact, and he should be such a one as the
 “ King thinks proper to order him to correct him-
 “ self, let him do it; but if the cause be such that
 “ the King ought not thus familiarly to apprize
 “ him, *let him send him before his Peers that they*
 “ *may take cognizance of it according to the rule.*
 “ And

“ And that he who will not conform to the just
 “ obligations of this compact, nor to the rectitude
 “ of the law, and who refuses to his Lord the res-
 “ pect due to him, let him suffer legal judgment;
 “ and if he will not submit to that, but is contu-
 “ macious and rebellious, and that he cannot be per-
 “ suaded to change his resolution, let him be expelled
 “ by all from the society of us, and of our kingdom.
 “ And if our Lord should not preserve to every one
 “ in his condition the rights secured to him by law,
 “ and which he himself, as well as his predecessors
 “ have granted to us, and to our predecessors, as
 “ well from right reason, as from the goodness he
 “ should display on every occasion, so that after
 “ having been apprized by his faithful subjects,
 “ he will not give way to their intention, know that
 “ he is so bound with us, and we with him, and
 “ that we are all so firm and united by his will and
 “ consent, the bishops and abbés with the laity,
 “ and the laity with the ecclesiastics, that none of
 “ us will abandon his Peer, so that our King, even
 “ were he so inclined, which God forbid, cannot do
 “ with respect to any one, what would be contrary
 “ to the rights conferred by law, right reason, and
 “ a legal judgment.”

I do not know how the partizans of arbitrary
 orders, and passive obedience, will explain this so-
 cial unity; (*adunatus, adunati*) this compact (*pac-
 tum*) these admonitions so unreserved and explicit,
 (*admonemur ut ille hoc corrigat & emendet, admoni-
 tus à suis fidelibus suam intentionem non voluerit*) on
 the part of persons who, according to the advocates
 of despotism, were never necessary members of the
 legislature; that doctrine of resistance, in short, so
 formally expressed and permitted in the case of de-
 nial of justice; a doctrine we find in our ancient
 laws, in several ordinances, particularly in those
 on

on the levying of subsidies, (see Ordonn. of King John, last of March, 1350; ordonn. of 28th December, 1355, &c.) in short, in the whole body of our ancient history.

As for me, confining myself to my present object, I shall content myself with observing how the legal judgment, the trial by our Peers, of which I shall speak at length, is recommended. (*Judicium justum. Justitiæ judicium ante suos pares.*) And above all, what sort of proscription is pronounced against contumacy and rebellion, (*contumax & rebellis*) and in the case of their not returning to their duty, (*& non converti potuerit*) that they should be expelled by all from the society of us all, and from the kingdom (*à nostra omnium societate & regno ab omnibus expellatur*). There is not here the shadow of a *Lettre de Cachet*. Even imprisonment is not decreed, although the crime the most dangerous to society be in question.

As for the rest, I am only a reporter. Apparently I shall not be suspected of regretting the jurisprudence, or the police of the Germans, or the Franks, nor even the greatest part of their legislation, though our jurisprudence and our legislation are not only defective, but essentially bad. The reader will see in the following note what my general opinion is of our ancient institutions; but writers must not be allowed impudently to legitimate the usurpations of despotism, which can never be authorized by any authorities or examples whatsoever, by asserting that *very modern inventions*, are very ancient ones, immemorial, and in use at all times.

St. Louis admitted the proof by witnesses, and abolished the judicial combat in the courts of his domains; but as it is said, in the establishments which bear his name, *le Bers*, (Baron) *si a toute justice*

justice en sa terre; ne li roi ne peut mettre ban en la terre au baron sans son assentement: ne li bers ne peut mettre ban en la terre au vavassor. (Ordonn. du Louvre, tome I. p. 126.) St. Louis therefore did not take away the judicial combat in the courts of his barons, except in the instance of appeals from false judgments; that is to say, when the lord, in spite of the appeal in default of right (*de defaute-de-droit*) in the parties (this French word explains itself) had given judgment. This Prince introduced also the custom of falsifying (*fausser*) the court of his Seigneur, that is to say, of appealing from a false judgment without the combat; which made a considerable change in the judicial order, and was perhaps the greatest step towards the revolution that followed; for the right of revision must necessarily supersede every other.

But it was chiefly by reviving the Roman Code that the establishments of St. Louis, whether they are to be attributed to that Prince, or to be traced to another origin, advanced that revolution. They mixed this Roman law, discovered about a century before, with the French jurisprudence, and with notions drawn from the canonical laws; which formed altogether an amphibious, (as M. de Montesquieu calls it) and sometimes a contradictory code. But still the most defective legislation had evident advantages over despotism, or rather over the anarchy of the corrupted feudal system. This new code of laws, therefore, had the greatest success, and became in a short time almost general. It opened new tribunals, and a great number of modes of appeal: it lasted however but a short time, because the revolution of the government in the following ages, accelerated by the successive efforts of so many Kings, was very rapid, and the changes in the judicial, kept pace with those in the political order.

But

But the Roman Code, which had formed its basis, subsisted in high favour. At the bottom, it was in some respects the best written system of civil law which then existed. Mankind were certainly neither profound enough, nor sufficiently well informed, to foresee the dangerous consequences which might result from introducing it. Alas! how could our ignorant ancestors look so far before them, since even in our days that code is held in such profound veneration, on the bare word of civilians? The doctrine it contains cannot but be highly grateful, and very commodious for the abettors of absolute power, and to those who aspire after its possession. At every step we meet with maxims of the most insolent despotism: the will of the Prince is deified throughout. *Quod principi placuit legis habet vigorem, cum populus ei & in eum omne suum imperium & potestatem conferat*, says Ulpian. *Imperator solus & conditor & interpres legis existimatur; sacrilegii instar est rescripto principis observare*, says the code. *In omnibus, imperatoris excipitur fortuna, cui ipsas leges Deus subjecit. Disputare de principali judicio non oportet: sacrilegii enim instar est dubitare aut indignus sit quam elegerit imperator, &c. &c.*

Such maxims form the genuine code of slavery. Princes adopted the Roman code, therefore, with avidity; that is to say, not only the institutions or principles of the Roman law, the pandects, or opinions of the lawyers, the general edicts, or imperial constitutions, the *novelles*, or new decrees of the Emperors engrafted on the old ones, but even the rescripts of these very Emperors; that is to say, the arbitrary, partial, the frequently absurd, and tyrannical decisions solicited and obtained by unworthy slaves on the smallest doubt that arose on the construction of the Roman jurisprudence, as
sacred

sacred oracles. All this made part of our legislation, and we became, as far as it was possible, subjects of the *COMMODOUSES*, and the *CARACALLES*. The pandects were discovered in 1137, and in a very few years after the Roman code was taught in different towns of France, as a part of scholastic study. (*Robertson*, Proofs, &c.) I am not the first who has discovered, but I hope one day to demonstrate, in a work which, composed when in chains, will only be the more animated with the noble spirit of liberty *, that the Roman Code alone has greatly accelerated the loss of our political liberty ; and the English, who have entirely submitted the Canonical and Roman to their common law, and suffer the observations of the Imperial and Papal laws only in inferior courts, have every reason to applaud themselves for their wisdom, notwithstanding the learned Robertson makes it in some degree matter of reproach.

The ancient and the new customs were partly confounded together in the modern jurisprudence. All the western world was governed only by traditions, because the cloud of ignorance in which it was so profoundly enveloped had rendered the art of reading and writing very rare. Almost all the nations of Europe however took the lead of us in collecting laws. Alfred, Edgar, and Edward the Confessor, had collected a digest of laws in England, in the 10th and eleventh centuries, long before the

Tractatus

* This work is now publishing at Berlin, under the auspices of the Great Frederick, a patronage of itself sufficient to stamp the superior mind of *any King*, and which, if he lives †, England shall soon receive from the hands of the translator. Happy in contributing his mite to the welfare of his fellow-creatures, by humbly seconding the noble zeal of this distinguished benefactor of mankind !

† This note was written and committed to the press during the lifetime of the late King of Prussia.

Traëtatus de legibus & consuetudinibus Angliæ of Glanville, which Robertson cites as the first collection of customs made in Europe, and which is only dated in 1181. The code, *Regiam Majestatem*, appeared in the same century in Scotland; and if it be the production of David the First, to whom it is attributed, according to Robertson himself, it is not, as he pretends, a servile imitation of the work of Glanville, since Malcolm IV. succeeded David in 1155. Alonzo, in the thirteenth century, in Spain, combined all the provincial customs in the celebrated code of *Las Partidas*; and the Swedes, about the same period, formed their *Landshag*. Edward, at the beginning of the fifteenth century, performed the same operation in Portugal. The French alone had not only no uniform code (*an advantage they probably never will enjoy*) but were without even a collection of their customs. Some lawyers had made an attempt only to collect the customs of certain provinces. Such was the object of Pierre de Fontaine, (1226) in his *Conseil*, which contains a detail of the customs of the *Pays des Vermandois*, and wherein the author tells us he was the first who attempted such a work. Beaumanoir, author of the customs of the inhabitants of Beauvais, lived about the same time; the establishments of St. Louis contained only the customs of the royal domains.

At length, Charles VII. in 1453, and his successors, particularly his son, Louis XI. had the customs of the kingdom digested in writing, and from that period they have undergone all sorts of changes, under the sanction of royal authority.

From the commencement of the third race, the Kings had issued particular ordinances, which were, properly speaking, no more than charters. Some time after they hazarded general ones, but with the

greatest circumspection. Philippe Auguste was the first who made this great stride in 1188 and 1190, (Ordonn. tome I. p. 1, 18) on which it is not improper to remark, that not less than one hundred and thirty years interruption of the exercise of the legislative power of the nation was necessary to prepare the way for this innovation; for the last of the capitularies collected by Baluze, was given in 921 by Charles the Simple.

In the space of three centuries which elapsed from Hugh Capet to the States General of 1302, created, so to speak, by Philip le Bel, for they bore hardly any resemblance to the ancient assemblies of the nation, no King convened these general assemblies. They consulted at least the Bishops and the Barons, the proof of which may be seen in the collection of ordinances. (Tome I. p. 5.) It was since the reign of St. Louis that the Kings of France have possessed the plenitude of legislative power, which Louis XI. totally swallowed up, though his tyranny, and very moderate abilities, contributed but little to that revolution, which was prepared by so many concurring circumstances, and successive efforts.

At length, ordinances, edicts, declarations, letters patent, arrêts of council, &c. are so multiplied, that the nomenclature alone is infinite. We may say of this mass what Livy said of the Roman laws: *Tam immensus aliarum super alias acervatorum legum cumulus.*

At present there remains perhaps but one dyke against this torrent of ordinances, become by degrees so arbitrary. It is their arbitrary nature itself which, by placing them in contradiction to each other, restricts the authority and the practice of them.

Such are the revolutions of our jurisprudence. We shall see how, in the midst of these variations,
the

the judicial power was successively distributed. In this, as in the preceding part of the work, I shall only throw together the mass; the details would be infinite, and do not enter into my plan.

I must observe, that the feudal system is not so modern an institution as is generally believed. It is certain that in all parts of the world, traces of it, more or less distinct, are to be found, and that alone induces a belief that it is a very natural plan of defence. But to confine myself to the subject I am treating, I shall only say that it is indubitable that this military and civil polity has at all times prevailed amongst the northern or Celtic nations, and that they carried its spirit and its principle with them into the new establishments they formed in the dismembered parts of the Roman empire.

I say they carried *the spirit and the principle*; for it is certain that they had no landed property in their native country, and that the distribution of lands was renewed every year amongst the Germans, lest the people, attaching themselves to agriculture, should turn indifferent to war; they were wholly unacquainted with what has been since called *feudal tenure*. But we find in Tacitus, a very distinct idea of military vassalage, if I may so express it, as the illustrious Montesquieu has remarked, who proves it by direct passages from Cæsar and from Tacitus. (*Esprit des lois*, l. XXX. c. III.)

When these people had formed establishments, it was necessary to think of protecting them, of maintaining, and defending them; and the feudal system sprung up successively, but conformably to the received ideas of every age amongst warlike nations. This is not the place to trace out the progress of their institutions of this nature. Montesquieu, Mably, Robertson, Blackstone, have done it with admirable neatness and precision. The

object here is only to shew, how the established order for the administration of justice flowed from these ideas of feodality, and followed all its variations.

“ The universality and early use of this feudal plan,” says Blackstone, tome II. cap. IV. *of the Feodal System*, “ among all those nations which in complaisance to the Romans we still call barbarous, may appear from what is recorded of the Cimbri and Teutones, nations of the same northern original as those whom we have been describing at their first irruption into Italy, about a century before the Christian æra. They demanded of the Romans, ‘ *ut martius populus aliquid sibi terræ daret quasi stipendium : cæterum ut vellet manibus atque armis suis uteretur.*’ The sense of which may be thus rendered ; they desired stipendiary lands (that is, feuds) to be allowed them, to be held by military and other personal services, whenever their lord should call upon them. This was evidently the same constitution that displayed itself more fully about seven hundred years afterwards, when the Salii, Burgundians, and Franks broke in upon Gaul, the Visigoths on Spain, and the Lombards upon Italy ; and introduced with themselves this northern plan of polity, serving at once to distribute and to protect the territories they had newly gained.”

We see what is the origin of that practice constantly observed in the monarchy from its origin to a very advanced period of the third race, that whosoever was under the military power of any one, was also under his civil jurisdiction. This was a principle common to all the northern nations, or rather an idea natural to all conquerors, and even to the most ignorant and uncivilized nations.

tions. The Greeks and the Romans had at first the same policy ; and it is easy to conceive that the first instinct of a social body, which stands equally in need of protection from arms, and from the laws, should unite these two powers in the same hands as long as the civil regulations continue simple, and not numerous. Another invariable principle of the civil and military power was, that one judge never decided alone ; and it is plain that this hinged on the same ideas with the former.

The national assemblies, (the *commune consilium* of the Germans, the wittenagemote of the Saxons, &c. for this institution is to be found in all the nations who came out of Germany) the national assemblies which partook of the legislative power with the King, not to say that he was no more than the executer of the common deliberations, exercised a supreme jurisdiction, and in causes of every sort. This was the practice of all the northern nations ; it was also the peculiar privilege of the Franks, who had stipulated it in the Salic law. *The Franks, it is there said, shall be judges one of another with the Prince, and shall decree together the laws in future, according to the occasions that may arise.* (Encyclop. at the word *Loi Salique*. Baluze, tome II. p. 178.) I shall enter into no further detail on a point so much discussed in these latter times, so perfectly established, so clearly demonstrated. The proofs of this assertion are innumerable under the two first races, and we have already seen that this custom was sacred amongst the Germans ; but in ordinary cases, and times, the following was the mode of rendering justice.

The Franks in spreading themselves over Gaul did not abolish the form of the Roman government, and preserved the titles of Counts and Dukes. Under the Emperors, the name of Duke, which at first

first signified only *Chief* or *Conductor*, was particularly appropriated to the commanders of troops distributed on the frontiers. These officers, superior to the tribunes, were perpetual; and in order to attach them to the department they were appointed to defend, lands were assigned them, and their soldiers, bordering on the barbarians, with slaves and cattle necessary to improve them. They possessed them in perfect freedom, with the right of bequeathing them to their heirs, on condition of the latter bearing arms. These lands were called benefices; and this is, according to a great many authors, the most ancient model of fiefs. (M. le Beau, *Histoire du Bas Empire*, tome I. p. 523.) However this may be, their authority extended itself, and they became governors of towns.

The Counts, officers superior to Dukes, were of a very remote institution. From the time of Augustus, we see senators chosen by the Prince to accompany him in his journies, (*comes*, à *comeando*, or à *comitando*) and to serve him by way of council. They became successively Counts of the palace, Generals of armies, and Governors of provinces. The extent of the authority of these dignities at length varied, and the Dukes obtained the pre-eminence.

The Count of the palace presided at the King's court; and the King himself, accompanied by the grandees, and by the Bishops, determined causes of the greatest importance. Cities had their Counts, provinces their Dukes, and villages their Centenaries. It is not amiss to observe, that such was the spirit of robbery in France, or rather in these barbarous ages, that these inferior judges were obliged to swear that they would neither commit any robberies themselves, nor protect robbers. (Capitul. Baluz. vol. II.)

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Let us remark also with M. de Mably (Observ. t. X. c. 3.) that this corruption appeared in the judicial order as soon as the Prince attributed to himself the power of disposing of employments without consulting the *Champ de Mars*. The Dukes, the Counts, and the Centenaries, says this writer, had all purchased their dignities, or rendered themselves worthy of it by some meanness; and these magistrates, entrusted with every department of government in their provinces, made a scandalous traffic of the administration of justice.

This institution of Centenaries, which took place at the end of the sixth century, under Clotarius and Childebert, in order to make each district responsible for the robberies committed there, is absolutely of German origin. Cæsar speaks positively of the judicial authority exercised by the *Centenarii*, or principal inhabitants of a district composed of different villages to the number of one hundred. *Principes regionum atque pagorum inter suos judicant, controversiasque minuunt*; and Tacitus, who details the constitution of this people more amply, adds a circumstance which proves that they called in the assistance of ordinary citizens, who themselves took part in the decisions. *Eliguntur & in consiliis principes qui jura per pagos viscosque redunt. Centeni singulis ex plebe comites consilium simul & autoritas adfunt*. Thence the *Notables*, or *Peers* of the French, and the *English Juries*, as we shall see. This establishment of Centenaries was afterwards imitated, and brought to perfection by Alfred in England, where it still subsists. It took place likewise in Denmark, and derived its source, like all the rest of our legislation, from the manners of the Germans. *Centeni ex singulis pagis sunt; idque ipsum inter suos vocantur; & quod primo numerus fuit, jam nomen et honor est.* (Mor. Germ.)

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The Dukes and Counts, and their Centenaries or Vicars, distributed in different parts of their governments, assembled the *Court Leets* or *Malles*, (PLAIDS, or MALLS) where the notables (*boni homines*) were convened. No judgment was pronounced, without taking from the most notable citizens, seven assessors, known by the name of RACIMBOURGS or SCABINS; and these assessors elected by the people, (*scilicet electos populi*, see art. XXII. of the first Capitulary of the year 809. Bal. tome I. p. 400. Dom. Bouquet, tome VI. p. 14.) and always chosen from the nation of the person against whom the process was carried on, formed the sentence. They must be at least to the number of TWELVE. THE CHIEF OF THE TRIBUNAL ALONE PRONOUNCED THEIR JOINT DECISION. (Mably, *Observ. sur l'histoire de France*, tome I. p. 27.)

Here is clearly the origin of the judgment by one's peers, or by jury, traces of which are to be found amongst all the nations who have obeyed the feudal laws; as in France, in Germany, in Italy, in England. Sternhook pretends that the tribunal of juries, which in the Teutonic language are called *Nembda*, was formed by Regner, King of Sweden and Denmark, who lived at the beginning of the ninth century. *Sir William Temple* asserts that there are sufficient traces of this custom, from the constitutions even of Odin, the first conductor of the Asiatic Goths, or Getes, into Europe, and founder of that vast kingdom which encompasses the Baltic, from whence all the Gothic governments of our countries of Europe, which lie between the north and the west, have taken their rise. This is the reason why this custom is as ancient in Sweden as any tradition whatever. (*Encyclop. at the word Pairs.*) It was known in England at the time of the first Saxon colonies; and *Bishop Nicholson*

son attributes the institution of it to Woden, their King, their Legislator, and their God. In short, it was a privilege immemorial, and common to all the Franks, not to be summoned and judged but by their peers. Sometimes in the monuments of our public right, even the peers are simply called *Franci*; as we see in the ordinance of Philip de Valois, of December 1344.

The authority of those civil and military officers, such as we have been defining, was nothing less than unlimited. It may be added too, that the *Missi Dominici*, extraordinary, and ambulatory judges, (a subsequent establishment, 'tis true) exercised a prettly extensive jurisdiction over the ordinary and fixed judges; a wise and salutary institution preserved by England alone.

It is unnecessary to observe that the administration of justice respected only free men. It is well enough known that man throughout, has given chains to man; that by the feudal law the whole people found themselves reduced to a state of vassalage under the Barons and the King; and that even the greatest part crouched under the most abject servitude; for the number of bondsmen, in all the nations of Europe, was prodigious; and these unfortunate victims of human pride were often dreadfully wretched and oppressed. Every master exercised an absolute power over his slaves, and had a right to punish them with death, without the intervention of the judge.

From the immemorial union of civil and military offices, arose the judicial powers of the seigneurs. This is a truth which the learned and ingenious Robertson has only feebly discovered, and which he lays aside almost as soon as he has shewn it. M. de Montesquieu, in my opinion, has evidently proved, that they derive their origin neither from
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affranchisements, as some have thought, nor from the usurpation of the possessors of fiefs, as the greater number assert. (V. liv. XXX. *de l'Esprit des Lois*.) From the time of Charlemagne we find proofs of these private judicial acts, which probably were founded on the confidence of the people in these terrible crises of oppression, which desolated France, under the Merovingian Dynasty. And certainly the royal authority was not on the decline, under that restorer of France, who was the first that gave any sort of regularity to the national constitution. In what we say here relatively to the judicial powers of the seigneurs, we must except Normandy, where justice was originally in the hands of the Prince, and was only exercised by virtue of his commissions. (Boulainvilliers, *Lettres sur les anciens Parlemens*.)

Writers on the history of fiefs have frequently introduced the ideas and principles of modern politics ; an infallible method certainly of deviating from the truth. When we read in our history the celebrated answer of Aldebert, Count of Perigord, to Hugh Capet, who asked him in a haughty, and rather extraordinary tone, *Who made him a Count ?* —THEY WHO MADE YOU A KING :—When we read these anecdotes, we are apt to think that this is the language of an audacious subject, proud of his usurped power, and emboldened by the degradation of the regal authority. But Aldebert most clearly said nothing but the exact truth. At a time when in England, from the concurrence of several circumstances, her Kings were much more absolute than in every other feudal kingdom, the Count de Varenne pointed to his sword as the title of his possessions, adding, *that William the Bastard had not conquered his kingdom alone ; but that the Barons, and amongst them his ancestors, were associated in his*
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enterprize ; the Count de Varenne expressed exactly the same sentiment with the French Baron, and all the feudatories of the kingdoms governed by the feudal law, might have said the same. The feudal system, the principles of which are founded on convention, and which is sealed by the reciprocal faith of the parties, was compulsory on the Kings, with respect to their Barons, as it was binding likewise on the Barons towards them ; this is consigned in all the monuments of our public right, besides that it is self-evident.

In what manner soever we conceive the first partition of the lands conquered by the Franks, and in general by the northern nations ; whatever idea may be formed of the first fiefs, it must be admitted, without incurring an absurdity, that it was not possible for fierce and warlike nations, jealous of their independence, to preserve the use of property from which they might be dispossessed at the will of a Sovereign, whose authority they so studiously limited in other respects, and for them to esteem such precarious establishments an adequate recompence for their triumphs and their blood. It was but just that he who cultivated the earth, should reap and hold the harvest. It was equally the interest of the community, and of the Prince, to attach the proprietors to the public weal, by securing to them and to their families, the possession of the portions granted to them, or which fell to them by succession. This change of property in no respect contradicted this principle, rather theoretic than politic, of the feudal law, that the King was the supreme Lord of the landed property, since he might gain, on the contrary, by the settlement and stability of the feudal tenures.

It was violence which at first rendered fiefs hereditary ; but this violence was very natural, as it was

was the effect of the Merovingian despotism, which had got to such an height, that no property was respected. The King withdrew, restored, and reassumed his gifts as his caprice dictated. So precarious a situation displeased undoubtedly the LEUDES* ; and we see them accordingly assembling at Andely, from the reign of Gontran, in the sixth century, to treat of the peace between him and Childebert, and to force these princes to agree that they should no longer be at liberty to withdraw at their pleasure the benefices they had granted. This was probably the first movement of the revolution respecting benefices, of the particulars of which we are ignorant. It is certain that this treaty of Andely produced all the great movements which agitated France under the Merovingian race, and terminated by the overthrow of that Dynasty. At length, the hereditary descent of these benefices was irrevocably decided in the Assembly of Paris in 615.

It unnecessary to enlarge here on the difference between the benefices properly called FIEFS, conferred by the Carlovingian race, and those of the Merovingians. It is enough to know, that it was then that the obligation of civil and military services was formally ordained. The three first chiefs of the new Dynasty felt it to be their interest to promote that of their vassals, in order more closely to attach them. Their powerful genius united, consolidated, and kept every thing in order ; but their

* LEUDES *apud veteres esse eos, qui sub principis cujusdam jurisdictione sunt, sive, qui ductum principis cujusdam sequuntur. Unde à nostra LEITEN vocem hanc derivatam apparet — Vivat Rex, qui tales habet LEODES. Gesta regum Francorum, cap. 13.—In Anglo Saxon, LEOTH denotat populum.—Gregory of Tours says, lib. IX. c. 20, LEUDES illi qui domino Guntchramno post transitum domini Clotairii sacramenta præbuerunt. Translator.*

their feeble successors were unable to conduct so complicated a machine. The fiefs which the Carolingian monarchy voluntarily restored to existence, became hereditary from the time of Charles the Bald ; nor do I see how it was possible for them not to become so, even under the most firm and the most able Kings.

It was not the same with respect to the commandries, such as *counties*, which became independent and perpetual, from whence resulted absolute anarchy, in the midst of which the jurisdiction of fiefs, successively subdivided into inferior fiefs, wherein the civil was constantly united with the military jurisdiction, extended itself to an excess produced solely by the aristocratical despotism erected by the Kings, by attacking the national liberty, under the persuasion that they were working only for themselves. We see, from the tenth century, the Seigneurs in possession of supreme justice, and delivering definitive sentences out of the reach of appeals. At length, they went so far as to erect their domains into regalities, (*jura regalia*) and they usurped almost all the royal prerogatives. This however is no longer any part of my subject.

The form of judgments changed with that of fiefs. It is of no importance to fix the precise moment of these variations. When fiefs became hereditary, the court-leets changed into assizes, in conformity with the principles of the feudal law, and the most ancient ideas of the nation ; the obligations of a vassal towards his Lord was to produce free men of war, and to judge his Peers in his court. (*Pares curtis. Pares curia.*) The Peers of every seignory assembled at certain periods before their Seigneurs, and gave judgment by the plurality of voices. The habit of being judged by Peers, was so rooted in the nation, that
when

when the towns had acquired corporate rights in the thirteenth and fourteenth centuries, they stiled their Judges, in several places, especially in Picardy, PAIRS-BOURGEOIS. (*Peer-Citizens.*)

Pierre de Fontaine, in his book, *Conseil à son Ami*, proposes and resolves the question of the number of Peers necessary to form a judgment. "You ask me, how many men are sufficient to render judgment. Undoubtedly, four are sufficient." But the number of Peers in the courts of the Barons was often much more considerable. We find, for instance, in the History of Languedoc, (by Devie and Vaissette) a criminal process in the court of the Viscount of Lautrec, in 1299, where more than two hundred persons assisted, and gave their voices.

Such was the constant rule of all the fiefs which the feudalists held in the feudal court of their Sovereign. The great vassals held the King's court, and so on, according to the degrees of the feudal hierarchy. M. de Boulainvilliers suspects, not without reason, that the real object of the reduction of the Peers of the kingdom to twelve, which is thought to be dated from the coronation of Philip, son of Louis le Gros, in 1129, was to diminish as much as possible the idea of an election, which had before been the invariable practice. (See the following note.) And, in fact, this reduction by no means did any prejudice to the right of a seat in the King's Parliaments or Courts, possessed by the other feudalists of the Crown: upon which it must be remarked, that the most probable, and the most generally received opinion is, that the title of Baron was only synonymous with that of a Seigneur of a noble benefice (*Seigneur d'un bien noble.*)

Louis

Louis le Gros, who appears to me to have been the first able King of the race of Capet, who had really any political system of conduct, wrought an effectual and very happy change in the jurisprudence, and judicial form, by instituting corporations in his domains. Long before him, the Seigneurs had granted charters of freedom or immunity to some of their towns, and to some villages. But Louis le Gros erected them into corporations, and established in them the municipal government. By little and little, this example was followed by the great Barons, who, exhausted by the Crusades, were in great want of money, and received the price of this act of justice. The charters of the new corporations were in fact new laws for the municipal administration of the new jurisdictions, and they above all prepared the way for greater innovations, by making the people feel the value of a more regular government, and the means of bringing it to perfection. All questions relative to property were decided in the corporations by magistrates and judges, named or elected by the townsmen. (*Robertson, Proofs, &c.*) The reader may see in the author I am quoting, and the writers he points out, very curious details on this new order of things, which took rise in the twelfth and thirteenth centuries. The chief privileges granted to the commons, such as justice, the right of keeping a militia on foot, of making extraordinary levies, &c. were gradually taken from them by the Kings. The ordinance of Moulins (article 71) deprived them of civil justice, still leaving them the exercise of criminal justice, and of the police. This latter jurisdiction, still very much restrained, is almost all that remains to the greatest part of municipal officers.

Besides

Besides the institution of the commons, Louis le Gros tried another method of recovering some influence over the jurisdiction of the Barons, by reviving the *Missi Dominici*, whom he called by the new name of Juges des Exempts. This did not succeed. It shocked the received usages and ideas, and the proud independence of the Barons too violently. His successors with more success encouraged the appeals authorized by the maxims of the feudal law in cases of denial of justice, whether voluntary or accidental. Now all authority of particular jurisdictions must fall sooner or later to the tribunals, which acquired the right of revision.

In the Parliament of 1216, under Philip Auguste, a Parliament which furnishes the first title by which the Peerage of France is distinguished from the Barony, though the Peers and Barons had an equal voice there, in forming the judgment : (Boulainv. Letters sur les Parliamens, lett. V.) In this Parliament it was decided, for the first time in fact, that a Noble might be proceeded against by any other than his Peers. It was determined that Blanche, Countess of Flanders, had been regularly proceeded against by simple Knights, a very remarkable innovation; for very soon the bailiffs or valets of the King, and the serjeants (*servientes armorum*) were thus employed; and, in fact, it was by a simple bailiff (*huissier*) that the Duke of Burgundy was summoned in 1470, under Louis XI.

From that period the judgment by Peers was neglected, and we see under the regency of Queen Blanche, the great requiring, before the day of the coronation of St. Louis, the enlargement of the Counts Ferrand of Flanders, and of Renaud of Boulogne, who had been prisoners for twelve years; and the restoration of lands held by violence from many of them, IN CONTEMPT OF THE LIBERTIES

OF

OF THE KINGDOM, and the passing of a formal and permanent law, that no one in future should be deprived of his fiefs, or of any rights whatsoever, without the judgment of his Peers. The terms in which Matthew Paris expresses this, are remarkable: "*Pars maxima optimatum petierunt de consuetudine Gallica omnes incarceratos à carceribus liberari, qui in subversionem libertatum regni jam per annos duodecim in vinculis tenebantur. Adjiciunt quod nullus de regno Francorum debuit ab aliquo jure suo spoliari nisi per judicium duodecim parium.*" This demand alone would sufficiently prove that the Kings, by striving to render their authority more independent, not only did not employ just methods, but that they had no other object than the interest of that authority, and not that of re-establishing good order.

But England, where the aristocracy had many checks to which it was a stranger in France, and where the disorders were perhaps greater, affords a very manifest proof, that the violences and robberies then exercised, were more owing to the spirit of the age, the general ignorance, and the barbarism of manners, than the nature even of the feudal government. The state, however, was of less extent, and the dependence of the Nobles more immediate. The turbulent and precarious situation of the Norman Barons, in the midst of a conquered and oppressed people, who abhorred them, had necessarily straitened this dependence. None of the feudal countries of Europe had any institution similar to that of the *County Court*, which the English adopted from the Saxons. This tribunal, where all the Frank fief-holders of a province, nay even the greatest Barons, were compelled to do service with the sheriff or king's officer, and the ambulatory judges, instituted by William the Conqueror,

sat in judgment on all the controversies that arose between the subjects of the different baronies. The King's Court passed sentence in all civil and criminal causes between the Barons themselves. William had assumed to himself the appeals from the Courts, the Baronies, and *County Courts*. This Prince, one of the ablest and most savage despots of whom history makes mention, had at that time in every sense prodigiously extended the royal prerogative, and concentrated the administration of justice in the last resort in his own hands, long before the Kings of France attempted it.

Well, then, let us see in Mr. *Hume*, what vexations were exercised in England on all ranks of citizens, even by the least grasping, and the most able Kings, always faithfully imitated in their robberies by their great vassals. "The Kings of England," says this philosopher, who the first among the moderns has disputed the palm of history with the ancients; "the Kings of England absolutely imitated the barbarous Princes of the East, who could not be approached with empty hands, who made a traffic of all their favours, and intermeddled with all the affairs of their subjects, in order to find a pretext to lay them under contribution. Justice itself was bought and sold without mystery. The King's Court, although the supreme tribunal of the kingdom, was open to those only who brought rich presents to the Monarch. The sums it cost the parties to obtain expedition, delays, demurrers, and, without doubt, the perversion of justice, were placed on the royal registers, and remained inscribed there as monuments of the iniquity and tyranny of the age!"

Let us not attribute, therefore, all the disorders of these unfortunate times to the nature of the government;

vernment; nor let us do honour solely to reasonable, at first, but soon arbitrary and excessive increase of the royal authority, and of the more regular policy which introduced itself in the following ages. The return of light dissipated the darkness. Nothing was more simple, and less dependent on the interposition of despotism.

After all, were not the declamations so often repeated against the feudal system infinitely exaggerated, still would it not follow that the nation has gained any thing by the government substituted by our Kings. This discussion, which I shall undertake elsewhere, would lead me too far from my purpose in this place. I shall only make one remark, which may awaken some ideas on this subject.

They were two Princes, almost cotemporaries, (Louis XI. and Henry VII.) who in France and England have given the severest blows to the feudal system. The consequences of their operations were very different. In France the great only were losers, and the King gained very much; for the people, though apparently less enslaved, were always so in reality; and the servitude in other respects was already mitigated. As for the Clergy, they preserved their privileges, and their property. In England, on the contrary, the commons had already a great influence in the legislation. The blow given by Henry to the Nobles, by humiliating that imperious order, aggrandized the Commons; and the revolution became complete, when under Henry the VIIIth the goods of the church were distributed amongst the people, who made the acquisition of them on the overthrow of the Romish religion, and who had no rivals, because the Nobles were ruined.

The people of England, however, did not become really free, before the grand catastrophe had caused the regal authority to be determined with precision. But there always remained to that proud and generous nation, two resources against despotism, which we had not possessed from the time of Charles VII. The right of taxing themselves, and the exemption from a standing body of mercenary troops. When the despot was inclined to arm, the people armed also, and armed better than him. We, on the contrary, disarmed ourselves from want of reflection and from lassitude, at the moment when it was the most necessary to public liberty to retain our arms, to remove every pretext for the establishment of a standing army.

We may talk as much as we please of our monarchical fanaticism, of the zeal of our Nobility, of the love of the French for their Kings; I maintain, that the event would have been very doubtful under the awkward and pusillanimous Charles VII. had not Henry VI. of England been an idiot; had not the house of Burgundy detached itself from his alliance, which never would have happened to an ambitious and able Prince; and had not England been rent and divided by domestic troubles.

But, Charles VII. once re-established, never was it more important to maintain and consolidate the feudal government, perfected, or rather long since corrected, by the establishment of the third estate, than at the moment when the sword was in the hands of the Prince. The true regeneration of France would then have been to render the representatives of the nation absolute masters in the states, and submissive at home. This was very possible, nay very practicable; but no, we were already corrupted. Charles VII. seized the plausible pretext of the troublesome circumstances. I say *pretext*;

text; for the English, who had exhausted themselves during four hundred years under the Normans and Plantagenets, by carrying their arms into France, were only tempted by the hope of plunder, and urged on by national hatred. The idea of conquering this kingdom was too absurd, before the unforeseen events of the reign of Charles VI. and became infinitely more so after the ill success of Henry VI. France ought, therefore, to have been henceforward more tranquil than ever. No matter. "Charles VII. gained," says Commynes, "and began with the imposition of *tailles* at his pleasure, and without the consent of the states of his kingdom, by making the Seigneurs consent to it, for certain pensions which were promised them, as a recompence for the taxes levied on their estates." (Mem. liv. VI. chap. VII.) Coquille says, "The nomination to the offices of assessors, receivers, comptrollers of the salt granaries, and granary keepers, was granted them, which were established in their counties and seignories, and which several of them enjoyed, in the middle of the reign of Francis the First, who took from them that privilege." (*Discours des Etats de France*, tome I. p. 280.) This capital point obtained, every thing was obtained, had it not even been followed by the terrible reign of Louis XI.

But this digression becomes too long. I am contented with having made the reflecting reader suspect, that it is very inconsistent to imagine that the nation is much indebted to its Kings for having overthrown the feudal system, and destroyed the Nobility, since from that moment they have told the people what Pompey told the Mamertins, who urged their privileges: IT IS OUT OF QUESTION TO

QUOTE

QUOTE LAWS TO A MAN WITH ARMS IN HIS HANDS.

St. Louis gave still more fatal blows to the jurisdiction of the Nobles than any of his predecessors. The judicial order, as well as the jurisprudence, underwent almost a total change under his reign. He established, of his sole authority, the four great Bailiwicks of Vermandois, of Sens, of St. Pierre-le-Moutier, and of Mâcon, to judge privileged cases, ecclesiasticks, and appeals from the Seignorial Courts. His power already extensive and stable, the respect due to his virtues, even his talents ensured the success of all his enterprizes. It must be allowed, that his was too often the reign of Clerks and Monks: in other respects he certainly performed many just, great, and useful things. Mr. Hume has justly remarked, that this Prince, of the most singular character spoken of in history, knew how to combine the humble and minute piety of a Monk, with all the courage and all the magnanimity of the greatest heroes; and, what ought to appear more extraordinary, the justice, the integrity of the most disinterested patriot, and the mildness and humanity of the most accomplished philosopher.

The more the royal authority extended itself, the more progress did that of the royal judges make. There is no doubt that on their side they neglected nothing to augment it. The jurisprudence, as we have seen, was become more complicated, and far beyond the knowledge of the ignorant Barons. All their retinue was as ignorant. The Peers and *Prud'hommes* were no longer in a state of judging. The Nobles also had their Bailiffs. At first they did not judge; but they gave the instruction, and pronounced the judgment of the Peers. By degrees they judged in their place. Men were more easily

easily reconciled to this practice, as the ecclesiastical tribunals had long set the example; for they had obtained or extorted the exemption from civil jurisdiction from the twelfth century, and we see them even enjoying this important concession, in the greatest part of Europe, from the eleventh, which beheld also the origin of the jurisdiction of the Legates. Already had the canon law roundly decided, that priests ought to be honoured, and not judged by Kings. *Sacerdotes à regibus honorandi sunt, non judicandi.* And nothing is less astonishing in the age when Venilon, Archbishop of Sens, lived, that the fact, that having had the audacity to excommunicate and depose Charles the Bald, that pitiful Monarch should write him,—“ This
 “ Prelate ought not to have deposed me before I
 “ appeared before the Bishops who consecrated me,
 “ and had submitted to their judgment, to which
 “ I have been, and ever shall be, very submissive;
 “ they are the thrones of God, and it is by them
 “ that he pronounces his decrees.” *Quâ consecratione vel regni sublimitate, supplantari vel projici à nullo debuerant, saltem sine audientia & judicio episcoporum quorum ministerio in regem sum consecratus, & qui throni Dei sunt dicti: in quibus Deus sedet & per quos sua decernit judicia; quorum paternis correctionibus & castigatoriis judicis me subdere sui paratus, & in præsentem sum subditus.* (Libell. adversus Venilonem, apud Duch. t. II. p. 436.) The third Council of Latran forbade the laity, under pain of excommunication, to oblige clerks to appear before them; and Innocent III. in the thirteenth century, determined, that clerks could not renounce that privilege, being a part of the public right. The clerks very soon passed from the exemption from secular tribunals, to a jurisdiction over the seculars in most affairs; that is to say, in all those which
 had

had the smallest, or the most remote connection with ecclesiastical concerns or interests, until the fourteenth century, when the temporal jurisdiction came by degrees to limit the spiritual. But this did not entirely succeed before the sixteenth century, by the famous ordinance of 1539.

But this not immediately belonging to my subject, I shall only observe, that the introduction of the civil law in all the ecclesiastical courts, was one of the most adroit institutions of sacerdotal despotism, inasmuch as it absolutely separated these tribunals from the national courts. We have already seen what motives Kings and their Ministers had to favour this jurisprudence. A mode of procedure, which placed the arbitrary power of decision in the hands of one man, without any other intervention, was formed in every sense to please them. The profound ignorance which then reigned in all the other orders of the state, prevented them from perceiving the important consequences of this innovation; and the superstitious, timid, and circumspect veneration they had for the clergy, greatly contributed to make them receive and even approve of a practice which had in some measure been consecrated by them.

The overthrow of the ordinary jurisdictions, almost wholly usurped by the bailiffs, was slow, and almost imperceptible; but even that served more solidly to establish the new order of things. We still find at the end of the fourteenth, or the beginning of the fifteenth century; "Sire, juge en
" ma justice haute, moyenne & basse que j'ai en
" tel lieu, cour, plaids, baillis, hommes féodaux
" & sergens." But there was no longer, says M. de Montesquieu, any thing but feudal matters judged by the Peers. The reason of it is simple; they understood nothing of any others, and their
learned

learned rivals lost no opportunity of stripping them.

The famous ordinance of Philip le Bel, of 1305, totally compleated the change in the judicial order. It rendered the Parliament stationary at Paris. Until then, the King's court of justice had been ambulatory, and attached only to the palace where the King had his residence. (*Aula regis.*) The name of Parliament goes back as far as Louis le Gros; but that court of the King was not judicial, in the present acceptation of that term, till towards the middle of the thirteenth century, under St. Louis. The most ancient register we have of the *Olim*, is of the year 1254. The register of Philip Auguste, intituled, *Registrum Curiae Franciae*, is in 1214; but they are only inventories of charters, (*Encyclopedie*, at the word *Parlement*.) Some writers pretend, contrary to the opinion of Roche Flavin, who is in the most repute, that the Parliament was a long time stationary before the commencement of the fourteenth century. However that may be, the first civil registers of the Parliament begin only in 1319, which by no means contradict the frequent sittings at Paris, at certain times of the year, from the year 1291, and this practice continued as long as there was business enough to find it continual employment. Certainly, as soon as it was determined that this court should become the supreme tribunal for property, it was necessary to make it permanent. Affairs having multiplied by the union of several baronies to the crown, by the reserve of royal cases, &c. the sittings of Parliament became longer. Philip the Long seized this very plausible pretext to exclude the Bishops from Parliament, by his ordinance of the third of December, 1319.

When

When the Parliament had become stationary at Paris, the King adopted the practice of sending every year, at the commencement of their sitting, a state of the Presidents and Counsellors, Clerks and Laity, who should sit there. Philip de Valois went so far as to make out a list of those who might expect wages. (Ordonn. du 4 Mars 1344.) But under the troubles of the reign of Charles VI. the lists or states being no longer sent, the officers of the Parliament continued of themselves, and became perpetual. (Encyclopedie, at the word *Conseiller*.) But Francis the First, by rendering the judicial employments venal, placed them in fact in the most strict dependence, under the appearance of rendering them more stable.

It is well known, that the Parliament, so long composed of the Peers of France, of the first order of the Clergy, and in general of the distinguished Nobles (*Proceres & fideles*), to whom were afterwards added the Clerks, or lettered Men (*doctores legum*), was soon composed only of the latter, and retained of the ancient and genuine Parliament, no more than the name, which the Kings stood in need of, that the exercise of the legislative power they had so palpably usurped, might occasion less surprize to the nation.

The Seigneurs who, from disgust for the new jurisprudence, and their inability of judging according to the laws which they could not even understand, had abandoned their own courts, with much more reason deserted that of their Sovereign. No law constrained them to it; no law deprived them of the right of being present in Parliament, nor of the personal exercise of their jurisdiction. No law created Bailiffs, nor forced the feudalists to name them; but they were compelled to it by the very nature of things, which made the judicial order
undergo

undergo all the metamorphoses by which it was to pass, before it arrived at the point at which we now see it. The Kings aided as much as they could, as if by right, this revolution. They strove by little and little, but incessantly, to render the Parliament at once dependent on them, and the supreme arbiter of all litigious affairs, reserving to themselves the power of limiting thereafter its jurisdiction, as they have done, by removing causes of every kind to their councils, which are still more immediately in the hands of the King, and which are become real tribunals, at the expence of the regular courts of justice.

Philip le Bel and his successors, however, conferred on the Parliament all sorts of privileges and distinctions, which rendered it more respectable, and more commanding, and thus attracted the confidence of the nation, which it merited by its integrity. It had long been the policy of the Kings of France to distinguish the Clerks, by which they wished to abase the Nobles. Bartole says, that a Doctor who had taught the civil law for ten years, became *ipso facto* a Knight. (Dissert. hist. sur la Chevalerie, par Honoré de Sainte Marie.) Thus those heterogeneous words became coupled together, of *Miles Justitiæ* and *Miles literatus*. They had already then the faculty of acquiring the Knight-hood; and though these titles were assuredly not of equal consideration, the privileges were the same, and that consideration which follows utility, soon became the portion of the lawyers. The jurisdiction of the Parliament extended itself slowly, and in the midst of the most strenuous opposition; for the Barons were very sensible that the government was giving the last, or at least the severest blow, to their privileges. They often went so far even as to cause such, as dared to appeal to the
Parliament

Parliament of Paris, to be put to death, or mutilated, and the ecclesiastics were not the most backward in committing these excesses. (See *Encyclopedie*, at the word *Parlement*.) The Kings were sometimes forced to prohibit their courts from receiving certain appeals. They frequently gave way, but always persevered in their plan. They regained, as soon as they could, possession of what they had been compelled to abandon, and attempted new experiments. At length, by a concurrence of circumstances and efforts, the exposition of which does not belong to my plan, and would furnish matter for a great and important work, the regal authority prevailed. Other Parliaments were created; even the provinces demanded them; and these bodies, which it has so long been difficult to define with precision; these bodies substituted in some measure for the rights of the nation, and which have not been able to preserve to it *one single privilege*, came to judge in the last resort almost all the affairs of the kingdom.

It was thus that the practice constantly observed in the monarchy was lost, of a judge never judging alone; for local courts subsist, and are entrusted to one judge; nay more frequently to his lieutenant, in the most superlative degree illiterate. It is true, that in cases where corporal punishment is in question, the judge is obliged to consult two graduates; and here are the feeble and only vestiges of the excellent institution of *Prud'hommes*, or Peers. In vain may it be urged, that the facility of appeals obviates the pernicious abuse of a single judge. That is only true in criminal affairs; for in civil discussions (and there are no trifling ones for the poor inhabitants of the country) the parties rarely have the means of recurring to an uncertain and expensive appeal.

It

It was thus that the practice of judgment by Peers changed at first gradually, and at length absolutely disappeared, a practice which it would have been so important to preserve, at least in criminal affairs, in which the ordinance of 1529 has exposed the liberty, the honour, and the lives of men, to such great danger, by rendering the information secret, which had till then been public. (*Witnesse*, says Beaumanoir, *ought to depose before every body.*) Because justice was often ill distributed in former times ; because the jurisprudence was defective and frequently absurd, it certainly does not follow that the judicial form was bad, or that Peers or Juries were not very good judges of a matter of fact, leaving the lawyers to pronounce the law, the fact being once established. I admit that it was necessary to establish a regular subordination between the different tribunals, to digest general laws, to retrench contradictory forms and customs, to obviate the clashing of jurisdictions, and to produce uniformity in the administration of justice. But the regular institution of the trials by Peers or juries, was by no means incompatible with all these changes. Had they only laboured with a view to liberty, order, and the public good, the question was to bring to perfection, and not to destroy it ; to make way for forms better adapted to the views of arbitrary authority, and more liable to become fatal to liberty, whenever the absolute power which creates, fills, and directs the tribunals, shall think proper to give the mandate, than all the abuses of the feudal system were, or ever could be. *Flagitiis ita, nunc legibus laborabatur.*

The practice of the trial by juries is the most perfect that ever was invented by man for the administration of justice. It is this which gives the English so advantageous a distinction over all the
other

other nations of Europe. The *trial by jury*, the *Habeas Corpus* act, and *the liberty of the press*, are the formidable bulwarks of their civil liberty; and this liberty, the most precious of all possessions, will never be destroyed, as long as the two former laws continue to be respected. Their great charter, therefore, lays the principal stress on the trial by jury. *Nullus liber homo capiatur vel imprisonetur, aut exulet, aut aliquo alio modo destruatur nisi per legale iudicium parium suorum, vel per legem terræ.* The reader must refer to the whole of Blackstone's Commentaries on the English Laws, and principally to vol. III. l. III. chap. XXIII. and vol. IV. l. IV. chap. XXVII. for the mode of practice in this sort of judgment, in civil and in criminal cases. I shall make a succinct extract of it, because it appears that we have not a very accurate idea of it in France, even amongst persons the best informed in other respects, but who can with difficulty be persuaded that better may be done in any country than what is actually practised in their own. The learned and useful authors of the *Encyclopédie* have not entered into any particulars on this head at the word *PAIRS*. *Hist. d'Angleterre*; and have not said a single word of this tribunal, at the word *JURIES* !!!!! *Causa reticentiæ patet.*—The following sketch will suffice at least to give an exact idea of it, and will prove better than all the arguments in the world, of what utility this mode of trial, so superior to every other, would be, were it universally received. The English have remarkably improved it; yet certainly it has still by no means attained its highest degree of perfection.

When two parties demand a trial by jury, they present their request to the ordinary judges, who send an order to the sheriff to send twelve FREE and LAWFUL MEN (*liberos & legales homines*) of the courts under his jurisdiction, to the bar of the
superior

superior court, or before the judges of assize, delegated by the King from the courts of Westminster, to go at certain periods to distribute justice in the provinces. The sheriff was anciently the officer of the count or alderman. He is our ancient vice-count. This annual magistrate exercises a very extensive jurisdiction in matters of police, and is likewise judge and guardian for the King, and his bailiff. He is the delegated officer of the courts of justice. His court is only competent to try trifling processes, the object of which does not exceed the sum of forty shillings.

The jurymen furnished by the sheriff must not be related to either of the parties. They are even compelled to appear under penalty of distrainment. If the sheriff be in any manner a party in the suit by blood, affinity, or favour, &c. the order must be addressed to the coroners, who in certain cases are his substitutes; and if any exception lies to them, which the parties are allowed to prove, the court names two persons of the county (called *Elisors*) to appoint the jury.

The sheriff who furnishes this list, whenever he is not suspected, is a magistrate on oath, a man of some fortune and consequence, who is responsible for the faults either of himself, or of his officers. The parties are informed of every thing concerning the peers or jurymen, that they may impeach them for sufficient reasons. The appearance of jurymen is usually in the county where the cause of action arises, which spares expences and delays, besides that the judges who pronounce from the report of the juries, are by this means absolutely strangers in the country; for no judge of assize can hold pleas in the county wherein he was born or inhabits.

There

There are two sorts of juries ; to wit, common and special juries. The latter serve in causes of too great nicety for the discussion of ordinary freeholders, amongst whom an officer appointed by the court chooses in the presence of the attornies on both sides, forty-eight persons. Each of the attornies strike off twelve from these eight and forty. This precaution is taken, lest the sheriff, who returns the jurors collectively, should be partial, though not so evidently so as to have justified an order of exclusion. The judges also convene special juries, when the cause appears to them so important as to require it ; and the parties have always the right of demanding a special jury on paying the extraordinary expences, unless the judge himself certifies that it is a necessary precaution.

If an alien be party to the suit, the jury shall be one half aliens, and the other half denizens (*de medietate linguæ*) ; an admirable law, which does honour to humanity, and is to be found in no other country in the world but England, which is as ancient, however, as the time of King Ethelred, that is to say, as the ninth century.

In the ordinary courts, the sheriff does not make a separate return of jurors for each cause. One list only serves to try all common affairs ; a fresh barrier against all cabals. This list cannot contain less than forty-eight, nor more than seventy-two jurors. Their names written on slips of parchment are all ballotted ; and at each cause that is called, twelve of those whose names have been drawn out of the box take the oath, unless they are challenged, or excused from serving. If a previous view of the lands, tenements, &c. be necessary, six or more of the jurors, to be agreed on by the parties, are appointed to take such view, and at the trial, such of them as have appeared on the view, shall
be

be sworn on the inquest previous to any other jurors.

There are two sorts of challenges. Challenges to the *array*, or general lists, and challenges to the *polls*, or the individuals who compose it. The former take place, as we have observed, on a suspicion of partiality or other default in the sheriff or under officer, who arrayed the pannel, and when the whole list is set aside ; a delicacy worthy of admiration !

Challenges to the polls (*in capite*) are of several kinds, and very numerous, so far has the law carried its attention to the security of property ; they are challenges to particular jurors. (*Recusatio civilis*, of the civil and canonical law.) A juror is not admissible to try a notice if he be a foreigner, and especially if he has not the property prescribed by law. This is no cause of challenge, however, to the alien when the trial is *de medietate linguæ*, for this would totally defeat the privilege. Suspicions of partiality, affinity even in the ninth degree ; any attachment to one of the parties, such as those of master, servant, attorney, lawyer ; even the most remote connection, such as having been arbitrator on one side or the other ; any mark of infamy, and even the slightest legal slur, &c. &c. are motives of exclusion. Jurors may challenge themselves in certain cases which form matter of exemption ; the validity and invalidity of the challenge is left to the determination of *Triors* appointed by the court. To these *triors* are joined successively the two first jurors improperly challenged, who then supersede the first *triors*, and proceed in like manner to try the rest.

It must be remarked, that the judges cannot be challenged ; for the law will not suppose a possibility of bias or favour in a judge who is already sworn to administer justice, and whose authority greatly

depends upon that presumption and idea. It is deemed sufficient to have the power of challenging the jurors who are judges of the fact; and this is very reasonable, since it is from the fact that the judge pronounces the precise text of the law, and it is thus that the jurors in a certain sense dictate to him his judgment. The pains so scrupulously taken to avoid collusion and secret practices, by submitting the election of jurors to chance, the multitude of causes of challenge against those who are named, must ensure the most profound security to the citizen.

After all these preliminaries, each juryman is separately sworn, well and truly to try the matter in discussion between the parties. The advocates then unfold the nature of the case, and deduce the proofs. The best of which the case is susceptible is required, if it can possibly be procured; if not, the best that can be found; always understanding, however, that the former could not be obtained.

As to the proof by witnesses, there is a process to bring them in, which commands them, laying aside all excuses and pretences, to appear at the trial on pain of 100*l.* to the King, besides 10*l.* to the party aggrieved, and damages equivalent to the loss sustained by his want of evidence; but he must be allowed his reasonable expences. Every witness who is not infamous, or interested in the cause, is competent, and deposes publicly on oath, (*viva voce*) before the parties, attornies, advocates, and spectators. Each of the parties has the liberty to impeach his competency, and these exceptions are openly and publicly approved or rejected by the judge. If in his decisions he gives a false interpretation of the law, the parties may publicly demand of him to sign a bill of exceptions, stating the point in which he is supposed to
err;

err; which bill he is obliged to seal, and which must be examined by an appeal to the superior court, after the judgment passed in the inferior one.

Thus partialities, prevarications, secret managements, are impossible. The witnesses and the judge are equally under the inspection of the first of all tribunals, *the publick*. The judge, the jurors, the advocates, and the parties, may equally interrogate and press the witness, who has the liberty to explain himself, and recollect his thoughts. What means of discovering the truth, and of disconcerting fraud and falsehood! Means known in no other country. If a juror has any knowledge of the fact in question, he may take an oath and be examined publicly as a witness. In default of positive proofs, circumstantial evidence, or the doctrine of presumptions, is admitted, until the contrary be proved.

When the evidence is gone through on both sides, the judge, in the presence of the whole court, recapitulates the whole, observing wherein the main question and principal issue lies. Then the jury withdraw from the bar to consider of their verdict, and are kept locked up, without meat, drink, fire or candle, (unless by permission of the judge) till they are all unanimously agreed. This is found to be an admirable method of accelerating the unanimity, required by law, and which is far preferable to the plurality of voices. If they receive any fresh evidence in private, or speak with either of the parties or their agents, or if to prevent disputes they cast lots for whom they shall find, any of these circumstances will entirely vitiate their verdict, &c. &c.

When they are all unanimously agreed, the jury return back to the bar. The plaintiff is bound to appear in court by himself, his attorney, or council,

in order to answer the amercement the law imposes on him in case he fails in his suit, as a punishment for his false claim. This amercement of the old law no longer subsists, but the form of it still remains. If the plaintiff does not appear, no verdict can be given, the jurors are dismissed, the trial is finished, and the defendant obtains costs and damages, but he may bring a fresh action, an indulgence perhaps excessive! But after a judgment had, and sentence consequent thereon, the suit is for ever at an end, unless a fresh trial be ordered by the court. The jury find for one party or the other, and fix the damages. The only effectual and legal verdict is a public verdict. In difficult cases, the jury, to avoid the danger of having their verdict attainted, and for better information, find a special verdict, stating the naked facts, and praying the advice of the court, or they submit a special case to the opinion of the judge or the courts above, settled by the counsel on both sides on a point of law, finding, however, a verdict generally for the plaintiff. They may take upon themselves likewise to determine at their own hazard, the complicated question of *fact and law*, and *without either special verdict, or special case*, may find a verdict *absolutely* either for the plaintiff or defendant. And so ends the trial by jury; a trial, which besides other great advantages, is also as expeditious and cheap as it is convenient, equitable, and certain. As for the rest, the poor, that is to say, such as affirm on oath that their goods are not worth five pounds sterling, are at no expence, nor does their misery render them the sport of injustice. An attorney and an advocate are assigned them, and obliged to serve them without fees. They are exempt from costs if plaintiffs; but are liable to some slight punishment at the discretion of the judges.

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The judgment cannot be entered till the next term after the trial; and that upon notice to the other party, so that if any defect of justice happened at the trial, he may obtain a new one in the courts above, which have the right to annul the verdict for errors or informalities, which may be of various sorts. An equitable and necessary concession, which obviates every objection that might be raised against the trial by jury! But it is not to be obtained except in cases that merit such an interposition, or in the case of manifest misconduct.

The particulars we have been reciting on the trial by jury in civil causes, are the same in criminal causes; but with still more scrupulous attention, if possible, and more leaning to the side of the accused: for the English laws which breathe humanity, have for a declared maxim, that *it is better for ten guilty persons to escape, than that one innocent man should suffer the smallest injury*. No man can be called upon to answer to the King for any capital crime whatsoever, until he has been previously accused by twelve or a greater number of his countrymen of the grand jury, assembled in his county; and the truth of all accusations under every form, and from whomsoever they proceed, must be confirmed by the unanimous suffrage of twelve of his equals and neighbours, irreproachable, indifferently chosen, and of good reputation. The prisoner (if the person accused be in custody) who is to be tried by his country, or his peers, is furnished with a copy of the accusation, the names of the witnesses, and the list of the jurors, with their professions, and places of residence, five days at least before the trial. He has the same compulsive process to compel the attendance of witnesses in his favour, as that which is granted for witnesses against him; an inestimable advantage most frequently

quently denied by our laws! Not only all the modes of defence and challenge above-mentioned are open to him; but he is allowed still farther, an arbitrary and even capricious sort of challenge (*in favorem vitæ*) to thirty-five jurymen, that is to say, one below the number of three complete juries, without alledging any reason; which is called, A PEREMPTORY CHALLENGE; an admirable disposition, which alone would suffice to raise the English laws above all others! *The bare question to a jurymen of his indifference, says Blackstone, would provoke his resentment.*

This privilege of peremptory challenge is not allowed the King, who cannot challenge a juror without assigning a sufficient cause, which must be examined by the court. If a point of law arises, counsel is assigned the prisoner. Otherwise the law does not allow him one; the judge, says the law, shall be his advocate. A fine theory, no doubt! but dangerous in practice; accordingly they are seldom refused counsel.

In all case of high treason, and in such as inflict infamy, two lawful witnesses are necessary to convict the prisoner; in almost every other, one witness alone is sufficient, which seems in some measure to contradict the mildness of the English laws. The proofs are administered as in civil causes, loudly and publicly. The jurors acquit or condemn the prisoner, that is to say, they pronounce on his innocence or delinquency. Then he is only *convicted*. He may still allege many things to suspend the judgment, and it is not till after the sentence that he is attainted. This sentence pronounces the penalty incurred by the law, which neither the judge nor the jury can either mitigate or exceed, and this without EXCEPTION OF PERSONS.

This judgment may be annulled by different means, and by virtue of various appeals, whether
for

for notorious errors, or for irregularities, omissions, want of forms in the process, &c. All the appeals from the jurisdiction of the inferior courts are brought into the King's Bench, and from thence into the House of Lords; but that only by order of the King. (*Ex gratiâ.*) Appeals in cases of informality alone must be granted in full right. (*Ex debito justitiæ.*) In concluding this abstract of the forms observed in England, in civil and criminal causes, I shall remark that the King cannot pardon an offence, but when the accusation has been brought at his suit; but that he cannot trench upon the privileges of a third person, by pardoning a crime prosecuted by an individual*. Let us finish this note, perhaps too long, but in which the subject is hardly broached, by Blackstone's beautiful eulogium of the trial by jury.

“ The impartial administration of justice, which
 “ secures both our persons and our properties, is
 “ the great end of civil society. But if that be
 “ entirely entrusted to the magistracy, a select body
 “ of men, and those generally selected by the
 “ Prince, or such as enjoy the highest offices in
 “ the state, their decisions, in spite of their own
 “ natural integrity, will have frequently an involun-
 “ tary bias towards those of their own rank and
 “ dignity; it is not to be expected from human
 “ nature, that *the few* should be always attentive
 “ to the interests and good of *the many*. On the
 “ other hand, if the power of judicature were
 “ placed at random in the hands of the multitude,
 “ their decisions would be wild and capricious,
 “ and a new rule of action would be every day
 “ established in our courts. It is wisely therefore
 “ ordered

* The English reader will perceive that the Author has mistaken our laws in this particular, apparently confounding the right of appeal in cases of murder by the nearest of kin, which bars the King's right of pardoning.

“ ordered, that the principles and axioms of law,
 “ which are general propositions, flowing from
 “ abstracted reason, and not accommodated to
 “ times, or to men, should be deposited in the
 “ breasts of the judges, to be occasionally applied
 “ to such facts as come properly ascertained before
 “ them. For here partiality can have little scope;
 “ the law is well known, and is the same for all
 “ ranks and degrees; it follows as a regular
 “ conclusion from the premises of fact pre-
 “ established. But in settling and adjusting
 “ a question of fact, when intrusted to any
 “ single Magistrate, partiality and injustice
 “ have an ample field to range in; either by boldly
 “ asserting that to be proved which is not so, or
 “ more artfully by suppressing some circumstances,
 “ stretching and warping others, and distinguish-
 “ ing away the remainder. Here therefore a
 “ competent number of sensible and upright jury-
 “ men, chosen by lot from among those of the
 “ *middle rank*, will be found the best investigators
 “ of truth, and the surest guardians of public jus-
 “ tice. For the most powerful individual in the
 “ state will be cautious of committing any flagrant
 “ invasion of another’s right, when he knows that
 “ the fact of his oppression must be examined and
 “ decided by twelve indifferent men, not appoint-
 “ ed ’till the hour of trial; and that when once
 “ the fact is ascertained, the law must of course
 “ redress it. This therefore preserves in the hands
 “ of the people that share which they ought to have
 “ in the administration of public justice, and pre-
 “ vents the encroachments of the most powerful
 “ and wealthy citizens*. *Every new tribunal,*
 “ erected

* Blackstone adds, “ It is therefore a duty which every man
 “ owes to his country, his friends, his posterity, and himself, to
 “ maintain

“ erected for the decision of facts, *without the in-*
 “ *tervention of a jury*, (whether composed of Jus-
 “ tices of the Peace, Commissioners of the Reve-
 “ nue, Judges of a Court of Conscience, *or any*
 “ *other standing magistrates*) is a step towards esta-
 “ blishing aristocracy, the most oppressive of abso-
 “ lute governments. The feudal system, which for
 “ the sake of military subordination, pursued an
 “ aristocratical plan in all its arrangements of pro-
 “ perty, had been intolerable in times of peace,
 “ had it not been wisely counterpoised by that pri-
 “ vilege, so universally diffused thro’ every part of
 “ it, the trial by the feudal peers. And in every
 “ country on the Continent, as the trial by the peers
 “ has been gradually disused, so the Nobles have
 “ increased in power, ’till the state has been torn
 “ to pieces by rival factions, and oligarchy in ef-
 “ fect has been established, though under the sha-
 “ dow of regal government; unless where the
 “ miserable

“ maintain to the utmost of his power this valuable constitution in
 “ all its rights; *to restore it to its ancient dignity, if at all impair-*
 “ *ed by the different value of property, or otherwise deviated from*
 “ *its first institution, to amend it wherever it is defective*, and, above
 “ all, to guard with the most jealous circumspection against the
 “ introduction of new and arbitrary methods of trial, which un-
 “ der a variety of *plausible pretences* may in time imperceptibly
 “ undermine this best preservative of English liberty.”

Here is a full and respectable authority to quiet the consciences of all the opposers of a Parliamentary reform, of every denomination except headstrong Tories, and interested Courtiers. The horrors of innovation vanish before the reasoning of this great mind. And further apply these remarks (for on such a subject no remark is trivial or *factious*) to the bill of Lord Chatham's Son for the regulation of India, passed in the session of 1784-5, and the establishment of his *Board of Controul*, and let every reflecting Englishman consider how ready his countrymen have always been *collectively* to forget their native laws and principles, and to adopt *different weights and measures* for their distant subjects and colonists. And above all, let them remember America!!!!—*Translator*.

“ miserable Commons have taken shelter under
“ absolute monarchy, as the lighter evil of the
“ two.

But if the trial by jury be above all others so advantageous in the regulation of civil property, how much greater is that advantage when applied to criminal cases, where it is infinitely more important for men to find out the surest methods of discovering the truth?

“ The excellence of this trial,” says Blackstone again, “ will hold much stronger in criminal cases ;
“ since in times of danger and difficulty, more is
“ to be apprehended from the violence and partiality of Judges appointed by the Crown, in suits
“ between the King and the subject, than in disputes between one individual and another to settle metes and boundaries of private property.
“ It was necessary for preserving the balance of our
“ excellent constitution to vest the executive power
“ of the laws in the Prince, and yet this power
“ might be dangerous and destructive to that very
“ constitution if exerted without check or controul, by Justices of *Oyer and Terminer*, occasionally named by the Crown, who might then,
“ as in FRANCE or TURKEY, imprison, dispatch,
“ or exile any man that was obnoxious to Government, by an instant declaration, that *such is their will and pleasure.*”

The excellent man who wrote this was not, nor ever has been in the Dungeon of Vincennes, thanks to his happy fate which gave him birth beyond the seas ! It is not therefore to ill-humour, to the bitter feeling of his misfortune that this humiliating parallel must be attributed between FRANCE and TURKEY, which he has traced out in a single period. In no part of his works do we meet with enthusiasm or prejudice : every thing contained in
them

them is the fruit of a profound, tranquil, and disinterested meditation. Let my principles be compared with his.

I shall conclude with the reflection which terminates the fragment of Blackstone I have been transcribing.

“ The liberties of England cannot but subsist, so long as this *palladium* remains sacred and inviolate, not only from all open attacks, (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it ; by introducing new and arbitrary methods of trial by Justices of the Peace, Commissioners of the Revenue, and Courts of Conscience. *And however* CONVENIENT *these may appear at first, (as doubtless all arbitrary powers well executed are the most* CONVENIENT *) yet let it be again remembered, that delays, and little inconveniencies in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters ; that these inroads upon this sacred bulwark of the nation, are fundamentally opposite to the spirit of our constitution, and that, THOUGH BEGUN IN TRIFLES*, the precedent may gradually encrease and spread, to the utter disuse of Juries, in questions of the most momentous concern.”*

It is easy to apply this profoundly wise reflection to what personally regards ourselves. It contains a capital truth, that men very rarely perceive, whether from their levity, or for want of information, and foresight, and which they often forget even after they have perceived it, because the impatience of the moment has more power over them than future dangers.

* Lord Chatham's Son's East-India Bill of 1784-5.
Translator.

dangers. This is the imperceptible, but the real, the principal, and inexhaustible source of almost every revolution.

(III.)

The Kings of France by right; and according to all the monuments of our public right, are only the trustees of free people.

IF in the text I have avoided all discussions of public right, it is not that I am not convinced that the monuments of our history establish, with great partiality for the governed, our rights, and the duties of our Sovereigns.

No people who formed kingdoms out of the dismemberment of the Roman empire, abandoned to their Kings an unlimited power; and though, from the concurrence of various circumstances, our institutions were not fixed with so much precision as those of the greatest part of Europe, no one is ignorant that the authority of our Sovereigns was only too much restrained for more than eight centuries.

The institutions of our ancestors have been greatly criticized, and certainly afforded ample matter for criticism. But in this, as in almost all other matters, the critics have all adopted one side, because they only see what flatters their opinion,

nion, their interest, and the modern systems of authority. They have not sufficiently observed that the independent constitutions of the proud nations of the North were productive of those sentiments of liberty and courage, which still distinguish even the European nations which are enslaved. They sprung up with such vigour, that whole ages of arbitrary administration, happily tempered by the progress of moral and political knowledge, and the civilization of manners have not been able to destroy them. It will only be in the course of time, that military despotism may bring us back to barbarism, and to the brutal state of slavery, such as was seen almost generally in Europe, under the Roman Emperors, on the supposition, however, that information does not become so extensive, as to open mens' eyes universally, and shew them their strength, as well as their interest and their rights.

As for the rest, if we except the reign of Charlemagne, when France, thanks to the powerful genius of that great-man, was as well regulated, as it could be, considering the spirit of the age, it must be allowed, that our ancestors enjoyed rather a tumultuous independence, than genuine liberty. Amongst the proudest people in the universe, and the most determined enemies of every kind of yoke, amongst the Germans, liberty was sold ! What does that decide ? That they had no idea of liberty. Thus love of independence was only a vague sentiment, almost as nearly bordering on slavery, as licentiousness ; for in the circle of human affairs, extremes touch, and there is no order but at the centre. All men wish to be independent, when dependence runs counter to their fancies ; but very few amongst them trouble themselves about liberty, and are capable of enjoying it.

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It cannot certainly exist, and continue without a rigorous execution of the laws, less necessary, 'tis true, in rustic and small societies, because simplicity of manners still retains every individual in a state of primitive equality. In every society composed only of a few families, the dependence of the civil magistrate is the necessary condition of the tranquility of the society; but if the authority of the magistrate be not exactly defined; if the rule of his judgments be not fixed and precise, and his co-active or executive force so limited, that it cannot become oppressive, there is an end to liberty. These then are the two extremes formidable to social tranquility. Should the citizens be independent of the magistrate, or could any one amongst them become so, anarchy is inevitable: no person either will or can protect the feeble, who are innocent, or the powerful, who are guilty. Should the magistrate be independent of the social body, despotism is the necessary consequence; political liberty is annihilated, and civil liberty, or that of individuals, is no other than an uncertain and precarious possession, which fluctuates at the mercy of the temperament, the character, and the understanding of Princes and their Ministers.

Thus from the days of the feudal system, the subjection of the working class, and the contempt for all useful labours produced the overthrow of all political union, because the haughty proprietaries, knowing no other employment than martial occupations, nor any passion but the despotism which they exercised over their bondmen, contracted a ferocity that promoted dissensions amongst them. Hence the tyranny of the strong over the weak; hence those confederacies, rather military than social, to remedy the general want of order and of justice. Hence that point of honour which,
uniting

uniting amongst themselves the different individuals of a family, and separating them in fact from the common family, established an intestine war of vengeance in the nation, and threw the whole body into a ferment at the pleasure of a few of its members. A small number of oppressors, who neither were, nor could be happy and quiet, held a whole people in chains. In like manner the Kings, profiting by the excesses of the feudal anarchy, successively seized on all the power, that circumstances, the discontent of the people, excesses, the divisions and ignorance of the great, permitted them to assume; they soon made encroachments, beyond the bounds, which a prudent and enlightened nation would have fixed, because they thought only of their ambition and their power, and not of the interest of the people they were pretending to protect; and shortly substituting the despotism of one, for that of a hundred tyrants, which in some respects no doubt is preferable, altho' infinitely more fatal in a great many others, they threw off every dependence on the social body, and persuaded themselves and others that they were—What?—Truly; they would be much puzzled to give a rational answer.

It follows from this accurate recapitulation, that the establishment of a regular and durable liberty, so far from being the practicable work of a barbarous or ill-informed people, requires the most profound reflection, the most extensive combination, and the most repeated observation, which can only be the produce of experience, how simple soever the result may appear, or really be. What an extent of information is necessary to embrace the great whole of possible events, and strictly to combine them with public order! What wisdom to determine with impartiality, but at the same time
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with an indefatigable foresight, the prerogatives of the sovereign authority, so that not only it shall not exceed its limits, but may evidently find a greater advantage in contributing to the maintenance of legal order, than in studying means to elude or overthrow them ! What apparent sacrifices must be made to the general good ! By what moderation must the natural love of independence, and the still more noble love of liberty, be necessarily tempered, in order to render it as impracticable for subjects to encroach upon the Sovereign, as for Sovereigns to despoil their subjects ! For we must not imagine that he will occasionally respect the privileges of the people, who does not respect his own ; and should a perpetual distrust reign amongst them, is it not an eternal state of civil warfare, the more dangerous as it is secretly fermenting ? Such enlarged views, such noble principles, and above all, such wisdom will never be the virtues of a barbarous, or ignorant people.

We may conclude from hence, that we ought not to be proud of, nor deduce very important consequences from our ancient constitutions, which were very defective, incomplete, partly established by violence, and above all totally annihilated. I confess, however, that it is natural enough to think of availing ourselves of them, when we see all the sophistries and criminal infidelities of the hireling writers of government ; and since they disfigure the monuments of our public right to defend their cause and ruin ours, it is laudable exactly to report the texts which they omit or mutilate.

To confine myself to the only point that is the object of this note, I shall advance that the election of our Kings, or the choice of the monarchial form of government, was indisputably the result of the free deliberation of the nation. The advocates
of

of despotism have gone so far in these later times, as to attribute to our Kings the right of conquerors over their subjects. This surely would be a chimerical pretension on the part of the descendants of Charles VII. and of Henry IV. Without attending to these ravings of adulation, I shall establish in a few words, in what manner our most ancient monuments testify that our Kings received the crown by the free consent of a free nation, and how our Kings have recognized this truth. Now, the most important consequences follow from this point of fact ; for as I have already said, a delegate certainly cannot prescribe against his constituent.

The manners and customs of the Germans our ancestors, are made known to us by two of the finest geniuses of antiquity ; historians without rivals, and without models, as capable of observing as of describing. Cæsar and Tacitus, who wrote at the distance of two centuries, one from the other, equally agree in representing the government of these people as extremely limited. In peace, says Cæsar, (c. XXIII. l. VI.) they had no fixed and common magistrate. The principal chiefs of each district distributed justice and decided differences. The authority of their Kings, according to Tacitus, (Mor. Germ. 7, 11.) consisted rather in the power of advising, than in the right of commanding. The jurisdiction of their magistrates was confined within such narrow limits, that they could neither imprison a free man, nor inflict any corporal punishment on him. (Id. *ibid.* 7.) There was a great difference in the social condition of some of their tribes ; but equality and independence formed the base of it ; they chose their Kings ; they chose their Chiefs ; the former from their nobility, the latter in consideration of their courage. (*Reges ex nobilitate, duces ex virtute sumunt.* Tacit. Mor.

Germ. It is very evident then, that theirs was a voluntary obedience ; and so voluntary, that they reserved to themselves the right of deciding in all affairs of importance, and that the Princes were then only the executors of the orders they received from the community. (*De minoribus rebus principes consultant, de majoribus omnes, ita tamen ut ea quoque, quorum penes plebem arbitrium est, apud principes per tractentur.* Mor. Germ.)

It would be as contrary to good sense as to history, to imagine that any of those conquering nations which came out of that swarm of barbarians, followed their chiefs from motives of force or fear. Their choice was the only pledge of their obedience. I have observed elsewhere, that amongst all the northern nations where crimes were bought off by compositions, or pecuniary fines, there was one legally determined and levied for punishing the murderer of the King ; with this only difference, that the fine was heavier than for any other. We find in the laws of the Anglo-Saxons, the different WEREGILDS established for homicide, from the death of the peasant up to that of the Sovereign, which was reckoned at THIRTY THOUSAND THRISMAS. (Blackstone, Hume, &c.) This is an irrefutable proof that royalty was then only looked upon as an office very subordinate to those who conferred it.

Without repeating here the proofs of facts, by which Hotman (*Gaule-Françoise*, chap. VI. page 47, edition of 1573) and our earliest historians, such as Gregory of Tours (a), Aimoin (b), &c. have established

(a) Gregory of Tours does not name Pharamond ; but St. Prosper, who wrote from the year 429, and who consequently was contemporary with Pharamond, names him in his chronicle.

(b) Authors of *Les Gestes*. (*The Franks ELECTED a hairy King, Pharamond, son of Marcomier.*)

established that our first Kings, whose very existence has been called in question, or at least their settlement amongst the Gauls, mounted the throne, not by right of succession ; but in consequence of a free and voluntary election. Without stopping at the history of Childeric expelled the throne, and restored seven years after, by the consent of the nation, (*illi quoque ab hoc indignantes, de regno eum ejiciunt.—Ipsis etiam rogantibus, à Thuringiâ regressus, in regno suo est restitutus.* Gregor. Turon. l. II. c. XII.) which history may only be a tale, I shall pass on to facts which cannot be doubted, making this very simple reflection.

The government of the nation depended on the common deliberations ; and the general assemblies so well known under the name of CHAMPS DE MARS, and CHAMP DE MAI, which they bore under the first race of our Kings, exercised a supreme jurisdiction over all persons, and in causes of every sort. Now this matter of fact so well known, and truly indisputable, ascertained in so many works, and which there have been such vain attempts to obscure, would sufficiently prove that the obedience of the Franks was voluntary ; for an enslaved nation never could have obtained the legislative right. The Salic laws, the most ancient and most respectable monument of our legislation, were formed by the nation itself. *Dictaverunt Salicam legem proceres ipsius gentis, qui tunc temporis apud eam erant rectores ; sunt electi de pluribus viri quatuor, qui per tres mallos convenientes omnes causarum origines sollicitè discurrendo, tractantes de singulis, judicium decreverunt hoc modo.* (Bouquet, præfat. leg. Salic, Recueil, page 122.) The nation gives itself in this code the title of PROFONDE EN CONSEIL, (Profound in Council) an epithet that venal writers have dared to turn into derision, but which proves

at least the existence of the deliberations of the people who assume it : *Gens Francorum inclyta, auctore Deo condita, fortis in armis, profunda que in consilio, firma in pacis fœdere.*—*Juxtà morum suorum qualitatem desiderunt justitiam.* (Recueil de Bignon, p. 11.) But let us proceed to more precise facts.

Many persons recount, says Gregory of Tours, that the French came out of Pannonia; that they first halted on the borders of the Rhine, that having passed that river, they went towards Thuringia, and that they there created hairy Kings in different districts or cities. *Tradunt multi eosdem de Pannonia fuisse digressos; & primum quidem littora Rheni amni incoluisse; debinc transacto Rheno, Thuringiam transmeasse, ibique juxtà Pagos, vel civitates reges crinitos super se creavisse.* And in another place. Several persons say that the French, after settling on the confines of Thuringia, created hairy Kings to govern them, of the first and most noble family amongst them, of which was Clovis. (Liv. II. chap. IX.) All this is but tradition; for we had no annals at a time when to read and write was a rare and marvellous science; but is not a tradition established at a period so near the commencement of our monarchy of great weight? Let us see how the transactions of the reign of this Clovis agree with Gregory of Tours.

Clovis only came to reign by election over the Ripuarians, who were governed by the code of the Franks, and whose country formed the greatest part of his kingdom. See how Gregory of Tours relates this; he makes Clovis speak to these people in the following terms: *I give you a council; IF IT BE AGREEABLE TO YOU, cast your eyes on me, that you may be under my defence.* The Ripuarians, adds the historian, hearing this proposal, applauded it as much by the sound of their shields, as by their acclamations,

acclamations, and having lifted this Prince upon a buckler, THEY CONSTITUTED HIM KING to reign over them. *Consilium vobis præbeo, si videtur acceptum: convertimini ad me, ut sub mea sitis defensione; ut illi ista audientes, plaudentes tam armis quam vocibus, cum clypeo evectum super se regem constituunt.* (Greg. Turon. lib. II.) Here is no longer a tradition, but an approved fact.

There are no *unquestionable* proofs, that after Clovis the Kings of the first race were elected; and, in fact, the regularity of succession was never much attended to under that dynasty; but it is likewise as certain, as the history of such remote periods can be, that the crown remained for three centuries in the same family; which seems to afford at least a very strong presumption that the first Franks acknowledged an hereditary right to the crown in one family. The passage of Gregory of Tours, above mentioned, declares it formally; and that authority concurs wonderfully with subsequent facts to confirm that opinion, which by no means contradicts the idea of a primitive election, which every thing in the history of the manners and customs of our ancestors irresistibly confirms.

But things take a total change under the second race, and it is no longer necessary to recur to tradition, or to indirect proofs. The crown is elective; this is clear, formal, indisputable, and demonstrated by every record.

The expulsion of the Merovingian dynasty by the family of Charles, is doubtless no very extraordinary revolution. That weak Princes, who had none of the attributes of royalty but the diadem, should give way to ministers who were omnipotent, is one of the strokes of fortune met with so frequently in history, and which the study of men
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and things explain so naturally, that it affords no subject of astonishment.

This is not the place to prove how true that fine observation is of the Cardinal de Retz, that the Carlovingian ministers made use of no other method to dethrone the Merovingians, than the very same power that the ministers their predecessors had acquired in the name of their masters: that the mayors of the palace, and under the second dynasty, the Counts of Paris, seated themselves on the throne of the Kings, justly, and likewise by the same means they had made use of to gain and subjugate their minds; that is to say, by enfeebling and altering the laws of the state, which always in the first instance pleases unenlightened Princes, because they imagine it paves the way for the encrease of their authority, but which in the end serve as pretexts for the Great, and motives for the people to revolt. I hope to prove in another work, wherein I propose tracing the historical and political picture of the revolutions of our government, this great truth, which is the most important and most useful deduction from all our history. I shall prove that in all ages of the Monarchy, the revolutions of every kind; the civil wars so fatal to France, since they have totally enslaved the Nobility, without restoring the smallest portion of liberty to the people, and even those of religion have had no other origin; fanaticism having become ambitious, and ambition, fanatic; and, in short, that the authority of our Kings, since the last period of the destruction of our liberties, has never augmented, without their real power suffering a diminution. But this discussion, which must be supported by facts, would lead me too far; and the subject is too important and too vast to admit only of a sketch. It will be sufficient to cast an eye on the circumstances

circumstances under which the Carlovingians expelled the Merovingians. This will not be a digression. It is material to the object I had in view in this note, to prove that this revolution must have been, and was approved freely and sincerely by the whole nation.

Charles Martel shewed himself the greatest man who had yet governed France. Never did warrior perform greater exploits; never was a statesman more commanding. It is inconceivable, surrounded as he was by external enemies, exasperated against the nation, menaced by the constantly reviving hydra of malecontents, and jealous and factious men; burthened with the government and the defence of a great empire, that he should have been able to extend the limits of France, to save it from a terrible invasion, to execute all his projects, to maintain, in short, and encrease his authority to the degree to which he carried it, free from intrigues, from crimes and treachery, by the sole force of his genius, and the prodigious resources of his incredible activity. The Frisians, the Germans, the inhabitants of Brittany, the Saxons, were more than once reduced by Charles Martel, when a more formidable enemy, who aimed at no less than the liberty of all Europe, one of the finest parts of which he had already usurped, put the state upon the brink of ruin. The French Monarchy was doubtless at an end, from the state of weakness to which the divisions of the Great, and the imbecility of the Kings had reduced it, had not Charles Martel held the reins of government. The Saracens, already masters of Spain, and whose power was equally prodigious in Africa and in Asia, threatened the whole of the Roman world, were vanquished by this great man. Without crediting that this irruption was made by four hundred thousand

thousand men, three hundred and seventy-five thousand of which fell by the Frenchmens' swords, I have no doubt that Martel, who owed his victory to his astonishing activity, and his profound prudence, would have fallen; France, over-run by these barbarians, would have passed under the yoke of the Arab Abdérame. This success filled the measure of Charles Martel's glory, at once the saviour and legislator of his country. His fortune and his ability did not fail him an instant. The German Nation subdued, the limits of the French empire extended, his losses recovered, the Saracens repulsed, attest his military talents; whilst his political conduct, and the brilliant and solid establishment of his family, display his genius. Superior to the prejudices of the age he lived in, he knew how to restrain the audacity and ambition of the clergy, and if he exceeded the bounds of justice in this respect, an excess became necessary perhaps from the insolence of the priesthood: if he did not restore to the Nation the liberties usurped by his predecessors; if he did not convene the National Assemblies, he must however have conducted himself with sufficient justice and moderation, to have been so beloved. The best proof that can be adduced of this is, the revolution he effected without obstacle; and the authority he left his children, by the consent of the French Seigneurs, asked for and obtained at a moment when the certainty of his approaching death would have counterbalanced his authority, had it been founded only upon fear.

The great revolution operated at that time, was then very natural, and agreeable to the wishes of the Nation. We dare say that it was even *just*. The Deliverer of France, her Restorer, had a better claim to the Crown, either for himself, or for children worthy of himself, than a degenerate race,
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which had given more Tyrants than Kings to France. Whether the Crown was hereditary from the foundation of the Monarchy, which can neither be proved, nor controverted in a satisfactory manner; whether it was then elective, as it became from the commencement of the second dynasty, Charles Martel had just pretensions to it, if the love, the respect, the gratitude and interests of the people are any titles. Was it not their first necessity to place the sceptre in hands that could wield it, whose vigour put an end to the fatal anarchy which had so long torn them to pieces, and dissipated the factions produced by the necessity in which Princes, incapable of governing, found themselves of employing absolute ministers?

It was a very singular production of nature, that this series of superior men, who by their successive efforts realized the projects of their houses, merited their high fortune, enjoyed it without envy, and transmitted it to a long line of posterity. I do not know whether the annals of any nation whatever offer a parallel to this privileged family, who for two centuries together so gloriously occupied the theatre of the world. Pepin le Vieux, even Grimoald, in spite of his faults, Pepin d' Héristal, Charles Martel, Pepin le Bref, and Charlemagne, form almost as remarkable an epocha in the history of Man, as in the annals of Mankind.

Pepin resolved to accept the crown disdained by his brother, subjugated by the monastic spirit of the age, and which his ancestors had not dared to place on their heads. But it was not as an usurper that he seized the sceptre. He had the just hope of attaining this supreme rank by the consent of the nation, which alone could maintain him in it. His reputation was formed, his authority well established, his partizans numerous, his rank respected,
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and all the forces of the state in his hands. Yet Pepin, absolute as he was, did not presume to aspire to the title of King, with which Childeric III. was still invested, without the authority of an assembly of the nation. He manœuvred very skilfully to secure himself their suffrages. His father had absolutely alienated the clergy, by the absolute manner in which he had checked their ambition and limited their power. A King had been seen throwing himself at the feet of the Bishops his subjects, to demand the punishment of one of his brethren who confessed himself guilty. Already had the Popes, so long the simple Bishops of Rome, made attempts against the liberties of the church in France, then more respected than those of all the rest of Christendom. Already had they formed the project of withdrawing Rome from the empire of Constantinople, and of placing themselves in the rank of Princes. Leon the Maurian had preferred the honour of being an Heresiarch to that of reigning with glory. He was employed in breaking images, whilst the Lombards were wresting from him the sceptre of Italy, and were availing themselves of the troubles occasioned by the innovations of the Emperor; innovations detested by the people, who saw more than their God attacked, since the genuine object of their worship and adoration was overthrown. Constantine Copronymas, the heir of Leon, and of his delirium, irritated more and more the Romish Clergy, disconsolate for the ravages of the Lombards. Gregory III. had offered Charles Martel to pave the way for his acquiring the dominion of Italy, as the price of a prompt and efficacious succour. Pepin did not doubt that Zachary, suecessor of Gregory, would have the same views, since he was urged by the same interest, and assailed by the same fears.

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In an age where no virtue was greater than superstition, every thing might be expected from such an intercessor. Zachary found this revolution just, which might produce a happy one in his fortune, and served Pepin with all his power. His suffrage decided weak consciences, and seduced the people; the principal part of the great were gained, the ambitious kept under. Pepin received at Soissons, in a general assembly of the nation, the crown, which no other could wear more worthily, and which fell without opposition from the head of a Prince, the feeble, and contemptible descendant of a race which had reigned more than two hundred and sixty years over the Gauls. Pepin, says a cotemporary writer, was raised to the throne by the authority of the Pope, the unction of the holy cream, and the choice of all the Franks. *Pepinus rex pius, per auctoritatem papæ & unctionem sancti chrismatis & electionem omnium Francorum in regni solio sublimatus est.* (Clausul. de Pepin consecr. ap. Bouquet, Recueil des hist. tome V. page 9.) *Una cum consensu Francorum & procerum suorum seu episcoporum conventu.* Ap. S. Dionys Capitul. Vol. I. p. 187.) And the Franks confirmed this disposition in an assembly subsequent to the death of Pepin.

It is proper to remark that the qualification of King by the Grace of God (*Dei Gratiâ Francorum Rex*) began to be in use under Pepin, who sometimes stiled himself *Pippinus Rex, vir incluster*; sometimes, *Dei Gratiâ, Francorum Rex.* (Recueil des hist. de France, tome X. p. 573, 597.) Attempts have been made to prove from this formula that our Kings held not from the choice of the people. I shall examine this strange assertion hereafter; and shall content myself with observing here, with M. de Montblin, that it would be singular
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to draw such a conclusion from a title which we know to have been assumed by simple seigneurs, by the deans of cathedral churches. (See examples of this, *Maximes du droit public François*, tome II. ch. VI. art. III.) And which was adopted for the first time by a King substituted, by the election of the people, in the place of the reigning family.

But it is just to observe, that Pepin required of the French, who had just deprived one family of the crown to place it on his head, to bind themselves by oath to maintain his children on the throne. But this fact, so far from destroying, confirms the right of election, since on granting the hereditary right to that family, the French reserved to themselves that of choosing in that family; these are then the very terms of the historian. *Ut nunquam de atterius lumbis regem in ævo presumant eligere.* (Clausul. de Pepin, consecr. ap. Bouquet, Recueil des hist. tome V. p. 16.)

The nation had every reason to applaud their choice. Not less able in peace, than in war, Pepin governed the monarchy with a prudence which became proverbial in an age where, of all qualities, this was the rarest and the least attended to. He restrained the nobility by a mixture of vigour and of goodness, which ought to be looked upon as the distinguishing characteristic of so great a King. He laid open his administration to every eye. None of the French Sovereigns have ever so exactly convened the states of the nation as Pepin and Charlemagne. It is a just subject of pride, and of regret, for a people who were never more free than under the most powerful of their Monarchs; nor more enslaved, than when their docility, the gentleness of their manners, and that habitual attachment to their masters, of which the history of Europe

Europe does not afford another example, seemed the most to merit a favourable treatment.

It was Charlemagne, above all, who restored a fixed and regular form to the national assemblies; for the different partitions of the monarchy had overthrown their ancient order. The despotism of Ministers had disfigured these assemblies, nor did Pepin re-establish them precisely in the whole of their ancient rights. At the accession of his son, they recovered all the power that belonged to them. Charlemagne owed his crown to them from a double title; for the French, even in the life-time of Pepin, in a general assembly at Noyon in 768, had made choice of his two sons for their Kings, on condition that the kingdom should be divided into two equal parts, which they marked out, and limited. *Una cum consensu Francorum & procerum suorum, seu episcoporum conventu.* (Ap. S. Dionys, capit. vol. I. p. 187.) And they confirmed this disposition in an assembly subsequent to the death of Pepin. It is Hincmar, Archbishop of Rheims, and author of the important treatise, *De ordine Palatii*, who vouches for this fact in his life of Charlemagne. (Ap. Bouquet, tome V. p. 90.) He died in 882, only sixty-eight years after the death of that great Prince, and he wrote from the report of Adelhart, his minister and confidant.

Had Charlemagne only been a conqueror, he would still rank amongst the most surprizing men whom nature has produced. Forty-six years of his reign, in fact, formed one continual chain of victories; nor were they gained over effeminate Asiatics, or stupid savages, confounded as much by terror and astonishment, as by the arms of their victors. They were the nations of the North, men of iron, whose ferocity he subdued as well as the climate. They were nations whom he alone
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has conquered. It was to the shores of the Baltic, to the Ebra, and to the Tiber, that he carried his name, his triumphs, and his power. Such exploits which would complete the career, doubtless, of many heroes, form but the most inconsiderable work of this incomparable Monarch. At once a legislator and a conqueror, he wrested his nation from the horrible barbarism in which it was plunged. He gave her the best laws which it was then possible for her to listen to, and receive; he strove to render her enlightened; he made her happy and triumphant; a double benefit without example. This sublime man understood true glory, and attained it. How could this ardent, this enterprising, this vast genius, meditate with so much prudence, and make such just combinations? How could a Monarch, the arbiter and vanquisher of almost all Europe, which he must at once govern, and contend with, descend to so many details, which alone would make an individual the object of admiration? Certainly, Charlemagne alone amongst mankind, has far surpassed what the imagination of poets and romance writers have combined to form their Demi-Gods. The restorer of France, the father of his subjects, a hero without model, and without a rival, he was the man of all nations, and will be filed Great in all ages!

Such a Prince was incapable of ingratitude, and had no need to enslave a nation he could lead, by the superiority of his talents, by confidence and love. These were the two resources of his government. He apprehended nothing from his subjects, who hoped every thing from him; nor did he deceive their expectation. The assemblies of the nation recovered all their rights, and even acquired new ones. They were convened annually during his reign; he rendered them more august,
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and more magnificent by the number of the Princes and the Great, and by the concourse of all orders of the state. *In quo placito generalitus universorum majorum tam clericorum quam laicorum conveniebat.* (Hincmar. oper. ed. Sirmondi, v. II. c. XXIX. p. 211.) This spectacle was such, that the Ambassadors of a Caliph of Babylon said, on quitting France, *that in Asia they saw masters often brave, and often enlightened; but generally capricious or cruel; that in the West they had beheld a people of Kings who were obeyed by innumerable armies covered with gold, and iron; that these Kings however had a chief who was the King of Kings; but that they, and he, had only one will; that they all obeyed in his presence, though they were all free and truly Kings.* (Boulainvilliers, *Lettres sur les Parlemens de France*, lettre II.) I hope the reader will peruse with indulgence this short digression, into which I have been drawn by my admiration for this great man. I return to the right of election.

Charlemagne, beyond all others, possessed the means of dispensing with the acknowledgment of this right of the nation. But his generous mind was not formed to debase itself by adopting such a policy.

In the year 806, this great Prince, so powerful and so well beloved, regulated, with the advice of a general parliament, the partition of the monarchy amongst his children. As a similar assembly had consented to his association on the throne with his brother Carloman, he endeavoured to prevent all the inconveniencies which might disturb the peace between them, or which might happen by the death of any of them. We have this act which was drawn up at Thionville; and contains the following remarkable words: *If one of the three has such a son as the people shall be desirous of electing to succeed*

succeed to the situation of his father, we will that his two uncles give their consent to the election, and that they let him reign in that part of the state which was the portion of his father. (Capitul. vol. I. p. 442.)

After the death of his eldest sons, Charles and Pepin, Charlemagne got the parliament general of Aix-la-Chapelle, in 813, to approve the association of Louis of Aquitaine to the empire, to the prejudice of his grandson, the unfortunate Bernard, King of Italy, son of Louis's eldest brother, who was condemned to die by a parliament assembled at Aix-la-Chapelle in 814, for attempting to assert his rights, annihilated by the nation. For this election of 813, Charlemagne TOOK THE ADVICE OF ALL, says Thegan, *from the highest to the lowest. Interrogans omnes à maximo ad minimum, si iis placuisset.* (Thegan, in gestis Lud. pii, art. VI.)

Charles the Bald, title XXX. of his Capitularies, acknowledges himself (art. 3.) *to be chosen by the will, the consent and acclamation of all his subjects. Electione episcoporum & ceterorum fidelium regni nostri voluntate, consensu & acclamatione.* (Baluse: tome II. p. 134.) We see, says Hincmar, in the consecration of Charles the Bald at Metz, in the year 869, *in our unanimity, finding ourselves agreed with the will of God, that this Prince, under whose protection we have placed ourselves with full consent, should be the lawful heir of the kingdom.* (Cerem. Franc. p. 99.)

Louis le Begue, in his coronation oath (877) calls himself *the established King by the compassion of God, and the election of the people. Ego Ludovicus misericordâ idomini Dei nostri, & ELECTIONE POPULI rex constitutus.* Baluse, tome II. page 870.)

Du Tillet pretends indeed, that ELECTIONE here only signifies SUBMISSION; and we find amongst our modern writers, such as the Abbé de Camps, Menin,

Menin, and a number of other cowardly and base flatterers, that if the Kings asked the advice and consent of the nation, it was only from compliment, and without any necessity. Such base assertions hardly deserve quoting, and certainly do not merit refutation. Yves of Chartres, who in defending the rights of Louis le Gros, traced the legitimacy of his election, and his coronation at Orleans, in 1106, and called the consent of the Bishops and the Great, the manner of creating the King; (*rectio est Belgicorum regem suum creare et consecrare. Epist. 189.*) Matthew Paris especially, who has written, *France whose dignity consists in being free, and whom her name perpetually reminds that she is the protectress of liberty: sinum ostendens defensionis, unde nomen Franciæ in lingua propriâ originaliter est sortita. (Anno 1242, page 585.)* These antiquated Frenchmen would probably find the new theory attempted to be established in their country, a very strange one.

In 879, after the death of Louis le Begue, grandson of Louis le Debonnaire, the states assembled at Meaux, recognized Louis and Carloman for Kings, though born of a mother who had been repudiated; and it is worth remarking that the Duke Boson, brother of the Empress Richilde, wife of Charles the Bald, GOT HIMSELF ELECTED in an assembly of Bishops and laity, King of Arles and Provence; which fully proves that the right of election was acknowledged and incontestible.

We know that in the parliament, or general assembly of the nation in the month of May 922, the greatest part of the great men of the kingdom, discontented with Charles the Simple, declared that they would no longer have him for Lord, and signified to him, that they renounced their fealty and homage towards him, by breaking and throw-

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ing to the ground pieces of straw which they held in their hands. (Capitul. ann. 922.)

I shall not enquire whether, as some pretend, a parliament held at Compiègne, named a tutor for Charles, the posthumous son of Louis le Begue, or whether the faction of Eudes of Paris placed him on the throne, whilst Guy, Duke of Spoletta, was crowned by another ; but it seems certain that there was no parliament for the election of Robert the First, the competitor of Lotharius, in 922, any more than for the King Raoul in 923, and so on with the other Princes, Louis d'Outremer, his son Lotharius, and his son Louis V. placed on the throne by the Capetean faction in these times of anarchy. Hugh Capet, whatever Mezerai and his copyists may say, at the head of six hundred armed men (*milites*), dispersed the assembly of the French, which was holden, says Gerbert, *the fifth of the ides of May 987*. (See Recueil de Duchesne.) It is even probable, as M. de Boulainvilliers remarks, that a free parliament would not have bestowed the royalty on a family which had no pretensions to it, to the prejudice of the children of Charlemagne, for whom they had sworn to maintain it ; since Foulques, Archbishop of Rheims, and the chiefs of the assembly where it was agitated to elect Eudes, son of Robert the Strong, for King, said, *We cannot consent to his election, because he is not of the family of Charlemagne*. (Efl. 5.)

But when Hugh Capet, whom a part of France did not at first acknowledge, saw himself almost certain of succeeding in his designs, he was desirous of rendering his usurpation legitimate by the suffrages of a free parliament he convened at Orleans in 988, and where he made them crown his son Robert, in order to secure him the throne.

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Here then is the *right of election*, or, at least, of *consent* and *confirmation*, (if the term of legitimation be not better liked) recognized even under the *third* race of our kings, and so well recognized, that Robert, son of Capet and his successor, confessed, *that the liberality of the French nation*, by an effect
Cætera desunt.

(IV.)

The author here in a fragment makes the following concise, but excellent Observations on the ENGLISH CONSTITUTION.

THE Author finds it ill settled, and ill balanced notwithstanding all its beauties : he endeavours to prove that the political liberty of Englishmen is more defective, than their civil liberty is secured. After discussing the principles of that constitution, and declaring open war against the Exchequer (the system of which so violently counteracts the principles of civil liberty in England), and the funds, (which must render the spirit of the nation wholly mercantile and venal) he maintains that the Representatives of a free Nation ought to be restrained by their *instructions*, if not for the quota of taxes, (the most essential point, which should be separately considered) at least with respect to the nature of them, and the mode of their collection. That they ought never to have the power of arbitrarily burthening commerce, infinitely beyond every calculation to which its profits foolishly and delusively exaggerated by the most active imagination, can possibly amount. That it is absurd to leave them the right of imposing excessive and perpetual taxes on objects of general consumption, and of the first necessity. That a free people should have fixed ideas of finance, as well as of legislation,

gillation, which ought to be fundamental and sacred laws, never to be infringed by their Representatives; and that wherever the doctrine of imposts is not fixed and immutable, there will neither be true liberty, nor stability, nor repose, nor durable tranquillity.

He then observes, that it is very inconsistent in the English, who have fought with so much fury for the abolition of the most formidable parts of the royal prerogative, should have substituted the present system of loans and taxes of every kind, the collection and administration of which, placed in the hands of the Crown, give room for a mode of receipt the most incompatible with liberty, for the creation of a multitude of officers and clerks, who beset every port, all the frontiers, all the interior districts of the kingdom, every city, every town, every citizen; and who being nominated immediately by the Crown, and removable by it at pleasure, are in a state of the strictest dependence upon the Crown, and give it an excessive influence. These, says the Author, are the inevitable consequences of *the funds*, and of the *perpetual taxes* imposed to form them.

He then comes to the *Civil List*, or revenue of the King. This annual sum of *nine hundred thousand pounds sterling*, (upwards of one hundred and sixty-one millions of our money) which is applied at the discretion of the Minister to certain purposes of the government, and chiefly at the disposition of the King, is paid into the Royal Treasury. What a number of important consequences, and, to cut the matter short, *fatal* to liberty, may spring from this arrangement, should the Sovereign dare to prevaricate!

The Author next observes, that it is a very imprudent act of confidence to maintain a disciplined
army,

army, paid immediately by the King, commanded by him, which ought only to remain on foot one year, 'tis true, and with the consent of Parliament; but which once levied, is entirely at the disposal of the Monarch. Unquestionably, says he, *this prerogative is infinitely superior to all those he has lost*; for a government, however absolute, if it has no army at command, will be much farther from oppression than the most limited administration, which constantly keeping mercenary troops in pay, may, whenever it thinks proper, give the most mortal stabs to the liberty of an unarmed, unsuspecting people, and so much the more devoid of military spirit, that invaluable and necessary spring for every nation that would preserve its liberty, in proportion as the *legionary spirit* shall become more extensive.

Our Author at length concludes, that individuals have undoubtedly the free exercise of liberty in England, because the laws, and especially the criminal laws, and the forms of judgments, (which however are visibly changing) are admirable there; but that England is very far from possessing political, in the same degree that it does civil liberty; and that it never will enjoy it, *so long as its representation is imperfect*, and its principles of policy continue to be so vague, so exaggerated, so arbitrary and so variable. The learned and judicious Blackstone maintains, that the practice of the trial by peers, or a jury, and the law of *Habeas Corpus*, are sufficient to secure the liberties of a nation for ever. I much doubt that, says the Author, I who am of opinion that all the parts of administration hold together by an indissoluble chain, and that civil and political liberty are two inseparable parts of the same whole, at least considering its duration, the principal object of all good legislation. But
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even on the supposition of Blackstone, British liberty is greatly threatened, or rather broke in upon; for the English *by little and little abandon the trial by jury*; and it is not clear that they have a sufficient security for the maintenance of the *Habeas Corpus* law, which is suspended at the moment the Author is writing (in 1778, during the detestable war against Liberty and America: [*Translator*]) since their Representatives are not *sufficiently dependent on their Constituents, nor independent enough of the Sovereign*, who, warned by the terrible examples of the impatient humour of his generous, but impetuous and passionate subjects, still *apparently* respects their constitution; but who is acquiring all the power necessary to infringe it, and if he ever attacks it openly, will give it the more mortal stabs, as from knowing the risks he runs, he will take his precautions better.

Here ends the Fragment of the Author.

F I N I S.

Mary Ann Lacey



